

**IN THE COURT OF
APPEAL AT NYERI**

**(CORAM: KARANJA, KANTAI & ALI - ARONI,
JJ.A) CIVIL APPEAL (APPLICATION) NO. E052
OF 2025 BETWEEN**

SYLVIA NTUE GITONGA.....APPLICANT

AND

JOYCE KINYA MARANGU

(Sued as Administratrix of the Estate of

JONAH M. MUTHURI).....1ST

RESPONDENT DAVID MURIITHI..

.....2ND RESPONDENT

(An application for stay status quo pending determination of the appeal against the Judgment of the High Court of Appeal at Meru (Edward M. Muriithi, J.) delivered on 28th November, 2024

in

C.A. No. E138 of 2023.)

RULING OF THE COURT

The application before the Court is dated 10th April, 2024 and is brought by the applicant, **Sylvia Ntue Gitonga**; under **rules 5 (2)(b), 20, 49 (2), (3) and (4)** of the **Court of Appeal Rules** and all other enabling provisions of law. The motion seeks an order of status quo ante as at 28th November, 2024 over the suit property, **Abogeta/L-Kiringa/480**. We note that the status quo as at 28th November, 2024 refers to a ruling delivered by the High Court where the applicant was granted 60 days stay of execution of the judgment of the High Court dated 23rd March, 2023. In

essence, the

applicant is asking this Court to similarly stay execution of the judgment dated 23rd March, 2023 pending hearing of the appeal herein.

A brief background of the matter indicates that in Meru Chief Magistrate Succession Cause number 48 of 1986, the court delivered a judgment dated 24th January, 1994, where it held that the original suit land Abogeta/L-Kiringa/6, from which the applicant's claimed property is a subdivision, belonged to the late Jonah Muthuri. The applicant was not a party to the suit at the particular time.

The record reflects that the applicant via an application filed on 10th November 2020 in Meru CMSC No.48 of 1986 sought to be joined as an interested party in the proceedings and also sought a declaration that the decree issued after the judgment was time barred for purposes of enforcement.

The magistrate's court in a ruling dated 9th June, 2021 held that the suit, Meru CMSC No.48 of 1986, had been fully heard and determined and the applicant could not be added as an interested party. The applicant's motion for joinder was dismissed and the court went ahead to advise the applicant that she could pursue a claim at the Environment and Land Court against Jennifer Mworira who sold her the land.

Being dissatisfied with this ruling by the Magistrate's Court, the applicant filed an appeal, Meru HCCA E072 of 2021, challenging the dismissal of her application. The said appeal was dismissed by the High Court on 23rd March, 2023. The applicant then filed Civil Appeal No. E183 of 2023 before this Court, which is a second appeal arising from the issue of whether the applicant should have been enjoined to the suit and whether the judgment of 24th January, 1994 was time barred.

The applicant's contention is that she is the registered owner of Abogeta/L-Kiringa/480, which is a parcel resultant from subdivision of Abogeta/L-Kiringa/6. She maintains that she bought the suit property from Jennifer Naitore Mworai who was the registered owner. The applicant faults the 1st respondent for not informing her of a court case regarding the property. Her main challenge to the matter is that the decree she cites dated 30th May, 1995 was statute-barred as it was being executed beyond the statutory limitation period. She states that she will be rendered destitute if the application is not allowed. She filed a further affidavit sworn on 10th April, 2025 and submissions dated 10th June, 2025 in support of the motion.

The 1st respondent filed a replying affidavit sworn on 17th April, 2025. She stated that the succession court had already determined ownership of the entire property to the late Jonah Muthuri and she had been unable to divide the property due to the

fact that the property had already been unlawfully sold. She stated that the appeal is not arguable, that the applicant could not have been joined to a concluded suit and that the application was coming after an inordinate delay.

The 1st respondent filed submissions dated 13th June, 2025 in opposition to the application.

This application was heard on 16th June, 2025 on the court's virtual platform where learned counsel **Mr. Oyando** appeared holding brief for **Mr Kiplang'at** for the Applicant. **Ms. Kimathi**, learned counsel, appeared for the 1st respondent. There was no appearance for the 2nd respondent and we were satisfied that he had been served with a hearing notice for the day but had not responded to the application.

We duly note that the judgment of 23rd March, 2023 which gives rise to the notice of appeal herein, resulted in the dismissal of the applicant's appeal. Though couched as an application for status quo, the applicant essentially wishes us to stay that judgment. However, that request is untenable in our view because this Court has maintained time and again that it cannot stay a negative order of the court except in exceptional circumstances.

This Court in the case of ***Mwanthii & 2 Others vs. Mukami (Civil Appeal (Application) E124 of 2024) [2024] KECA 624 (KLR) (24 May 2024) (Ruling)*** stated that:

“In Western College of Arts & Applied Sciences v Oranga & Others [1976-80] 1 KLR 63, the Court of Appeal for East Africa stated thus on the issue:

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In *Wilson v Church*, the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any parties to do anything, or to refrain from doing anything, or to pay any sum.”

In the impugned judgment of 23rd March, 2023, the High Court merely dismissed the appeal but did not give any further orders. The High Court also rightly noted that the judgment of the court dated 24th January, 1994 was never appealed against and remains in force, which brings to question the arguability of the intended appeal, against a judgment rendered more than 30 years ago. We find that the applicant has failed to show that there is an arguable appeal with chances of success.

We are also not convinced that the applicant’s appeal will be rendered nugatory for reason that the application in issue is brought more than 30 years after the judgment of the Magistrate’s Court and 1 year after the judgment of the High Court and the applicant has not demonstrated what threat of execution has been made against her property during that time. Additionally, the trial court suggested recourse as against the seller of the land, which

recourse the applicant opted not to take. Therefore, the application fails on the nugatory aspect.

We hereby find that the application has not met the threshold for grant of the orders sought and the application dated 10th April, 2024 is dismissed with costs to the 1st respondent.

Dated and delivered at Nyeri this 11th day of December, 2025.

W. KARANJA

.....
JUDGE OF APPEAL

S. ole KANTAI

.....
JUDGE OF

APPEAL ALI -

ARONI

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed
DEPUTY REGISTRAR