

**IN THE COURT OF
APPEAL AT
ELDORET**

**(CORAM WARSAME, MATIVO, & GACHOKA,
JJ.A.) CIVIL APPEAL (APPLICATION) NO. E067
OF 2025**

BETWEEN

**WILLIAM MALIT.....1ST
APPLICANT JAMES KIPSANG CHIRCHIR.....
.....2ND APPLICANT SAMUEL MALAKWEN
KIPYA.....3RD APPLICANT JOHANA KIPROP
BETT.....4TH APPLICANT WILSON
KIPLANGAT KIPRONO.....5TH APPLICANT
WILLIAM KIMUTAI BUSIENEI.....6TH
APPLICANT KIPLAGAT KATTAM.....
.....7TH APPLICANT JOSEPHAT KIPROTICH
TERGECH.....8TH APPLICANT BARNABA KIMUTAI
BIWOTT.....9TH APPLICANT**

AND

**VINCENT KIPYEGO KEMBOI (The Administrator of the
Estate of the late JOSEPH KIPKEMBOI
MARITIM.....RESPONDENT**

(An application for stay of execution from the judgment and order)

**in
ELC No. 156 of 2014)

**REASONS FOR THE
RULING**

1. The applicants' Notice of Motion dated 31st July 2025 came up for hearing on 26th November 2025. The applicants were

represented

by Ms. Ngala, advocate, while the respondent was represented by Dr. Chebii, advocate.

2. Upon considering the application and the submissions that were briefly orally highlighted by counsel, this Court dismissed the Notice of Motion under rule 34 of the Court of Appeal Rules 2022 and reserved the reasons for that decision to be given within 14 days. These are the reasons for the dismissal of the application.
3. To put the application in context, we shall give a brief background of the dispute. The dispute concerned ownership of a parcel of land, **NANDI/LESSOSS SETTLEMENT SCHEME 650**. The respondent sued the applicants in Eldoret **ELC No. 156 of 2014**, seeking a declaration that he was the lawful owner of the land. The respondent also prayed for an order for the eviction of the applicants from the suit land. By judgment of the Environment and Land Court (ELC) dated 18th May 2023, *Onyango, J* held that the respondent was the lawful owner of the suit land and ordered that the applicants be evicted.
4. In the application before us, the applicants sought an order for stay of execution. The application was supported by the affidavit

sworn by the 1st applicant on 31st July 2025. The applicants stated that being dissatisfied with the judgment of the ELC, they lodged a notice of appeal and a memorandum of appeal. However, the notice of appeal and the memorandum of appeal were not annexed to the application.

5. The applicants admitted that they had been granted a conditional stay of execution on 12th October 2023 by the ELC. However, the stay lapsed because the applicants failed to meet the conditions set by the court.
6. The applicants further contended that they elected to pursue out of court negotiations post judgment. Consequently, they withdrew their notice of appeal under rule 83 of this Court's Rules. Finally, the applicants submitted that eviction orders against them were granted on 31st July 2025 and thus beseeched this Court to grant an order for stay of execution of that order as eviction was imminent.
7. The respondent opposed the application. He filed a replying affidavit sworn on 21st August 2025. He contended that the substantive rights between the parties were heard and

determined by the Kapsabet Chief Magistrate's Court in **PMCC No.**

161 of 2007 and that the appeal before the Eldoret ELC was unsuccessful. He stated that there was no basis to grant stay orders since the applicant had initially sought and was granted a conditional stay by the ELC but failed to comply with the conditions that were imposed by the Court. Furthermore, the respondent stated that the application had been overtaken by events, as eviction had already taken place through a court order that was supervised by the police. The respondent argued that the application was an abuse of the court process and prayed that the application be dismissed with costs.

8. As already stated, upon considering the application, we found that the applicants had not met the threshold for the grant of an order for stay of execution. An application of this nature invokes the discretion donated by rule 5 (2) (b) of this Court's Rules. To succeed, an applicant must satisfy the following twin conjunctive principles: that the appeal is arguable and that it would be rendered nugatory absent stay.

9. As to whether the appeal is arguable, it is trite that an arguable appeal does not necessarily mean one that will succeed. The applicant only needs to demonstrate that at least one ground is arguable. [See **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet** [2018] KECA 701 (KLR)].
10. In this case, we are not satisfied that the applicants have shown that they have an arguable appeal. This is because no memorandum of appeal was annexed to demonstrate that the appeal raised arguable grounds. We have also examined the affidavit in support of the application, and we are not satisfied that any arguable ground can be discerned from that affidavit. We say no more, as the merit or otherwise of the appeal will be determined by the bench that will hear and determine the appeal. Having failed to demonstrate the first limb, this Court need not determine the nugatory aspect of this appeal.
11. Lastly, there was no evidence to demonstrate that the applicant had invoked the jurisdiction of this Court. This is because there was no evidence that a notice of appeal had been filed, as it was not annexed to the application. On their own admission, the

applicants stated the notice of appeal previously filed was withdrawn as they opted to pursue out-of-court negotiations. This means that the application was a non-starter.

12. Accordingly, these are the reasons why the application was dismissed with costs under rule 34 of this Court's rules.

Dated and delivered at Nakuru this 10th day of December 2025.

M. WARSAME

.....
JUDGE OF APPEAL

J. MATIVO

.....
JUDGE OF APPEAL

M. GACHOKA C. Arb, FCIArb.

.....
JUDGE OF APPEAL

*I certify that this is a
True copy of the original
Signed*

DEPUTY REGISTRAR