



**Njue & 3 others v Nyaga (Environment and Land Appeal E062 of 2025)
[2025] KEELC 18524 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E062 OF 2025
AK BOR, J
DECEMBER 9, 2025**

BETWEEN

**JAMES MURIITHI NJUE 1ST APPELLANT
ANTHONY NJERU NJUE 2ND APPELLANT
DAVID KITHU NJUE 3RD APPELLANT
JACKSON MURIITHI KITHANGARI 4TH APPELLANT**

AND

JENARD JOSIAH NYAGA RESPONDENT

RULING

1. The Appellants brought the application dated 2/9/2025 seeking stay of execution of the eviction orders and decree issued on 14/8/2025 in Embu MC ELC Case No. E002 of 2020 pending hearing and determination of the appeal. The application was made on the grounds set out on the face of the application and on the supporting affidavit sworn by the 1st Appellant, James Muriithi Njue on his behalf of the other Appellants. He averred that they filed Embu MCELC Case No. E002 of 2020 jointly claiming from the Respondent a portion measuring 15.2 hectares (ha) out of Mbeere/Kirima/4444, which measures 40.1 ha, through a customary trust. The Respondent filed a counterclaim seeking to have them evicted from the suit property. That while the suit was pending in court, the Court of Appeal in Nyeri CA No. E011/2021 held that no customary trust existed in respect of persons occupying the resultant subdivisions of Mbeere/Kirima/2244, of which the suit land was a resultant subdivision.
2. They urged that because the trial court lacked jurisdiction to determine a claim for adverse possession, they filed Embu ELC (OS) No. E10 of 2025 seeking adverse possession. They sought stay of proceedings in Embu MC ELC Case No. E002 of 2020 pending the determination of the adverse possession claim, but stay was not granted. The trial court delivered a judgment on 14/8/2025 and



- ordered them to vacate the suit land within 30 days, failing which they would be evicted. Being dissatisfied with the judgement, they filed this appeal, which they maintain raises several arguable issues. They contend that they live with their respective families, including young children, on the suit land and that all their developments are on the said land which is also their main source of livelihood.
3. They contend that if they are evicted, they will suffer substantial loss as their families will be rendered homeless and the appeal will be rendered nugatory. They added that the application was made timeously and without unreasonable delay and that they were ready and willing to comply with any reasonable conditions on security that this court may impose.
 4. The 1st Appellant attached to his affidavit, the authority to plead, official search for Mbeere/Kirima/4444, pleadings in Embu MCELC E002 of 2020 and judgment in Nyeri CA No. E011 of 2021. He also exhibited the originating summons in Embu ELC (OS) Case No. E010 of 2025 together with the ruling and decree in Embu MCELC Case No. E002 of 2020.
 5. The Respondent filed a replying affidavit opposing the application. He averred that he had suffered substantial financial and economic loss from being denied use of the suit land since 2020 when the Appellants illegally took occupation of the land, and despite obtaining orders of eviction against them in his other parcel of land known as Mbeere/Kirima/4224. He contended that the application was brought after inordinate and inexcusable delay since the Appellants were given up to 24/9/2025 to vacate the suit land according to the trial magistrates judgment delivered on 14/8/2025.
 6. He further contended that the intended appeal was calculated to deny him the right to enjoy the fruits of the judgment, and that the Appellants had engaged in forum shopping in pursuit of favourable outcomes. He referred to a preliminary objection dated 8/5/2025, which he asserted was filed when the proceedings in the trial court were at an advanced stage. He explained that he had spent a lot of money on the suit and it was unjust for the Appellants to seek to prevent him from enjoying the fruits of the judgment. He annexed the judgment delivered on 14/8/2025 to his replying affidavit.
 7. The application was canvassed through written submissions. The Appellants submitted that they had met the conditions for stay provided for under Order 42 rule 6 (2) of the Civil Procedure Rules. They submitted that together with their families, they had lived on the suit land for over 60 years and that their homes, farms and livelihoods are permanently established on the suit land. They pleaded that eviction from the only home they know would occasion immense loss to them incapable of being compensated by damages. They averred that the Respondent had access to the balance of the suit property which is over 60 acres. They added that if orders of stay were not granted, they together with their families will be rendered homeless before the appeal and the pending case for adverse possession were determined and render the appeal nugatory.
 8. Further, that the application was filed 20 days after the trial court's judgment and therefore within reasonable time. They indicated that they were ready and willing to abide by any conditions or terms that the court may deem just regarding security for the due performance of the decree. They stated that they are peasant farmers who rely on the suit property for their upkeep and for the support of their family members, and therefore request that any terms as to security be such as they could meet. They also submitted that none of them had an independent title over any other parcel of land and that they could raise Kshs. 100,000/= collectively. In the alternative, they were willing to execute an appropriate undertaking.
 9. The Respondent submitted that the Appellants had not demonstrated substantial loss, as they did not provide any empirical or documentary evidence to support their claims. He described the Appellants as opportunists who habitually occupy idle land and later file suit claiming adverse possession or customary trust. He submitted that the 4th Appellant was awarded 10 acres by the court in a different



case which showed that no substantial loss will occur if stay is denied. On the issue of delay, the Respondent conceded that the application was filed without unreasonable delay. He admitted that the suit land is large measuring 100 acres and that security for costs must at least be commensurate to its value. He proposed the sum of Kshs. 4,000,000/= as security to be paid within 15 days.

10. The issue for determination is whether the court should stay execution of the eviction orders issued on 14/8/2025 pending determination of the appeal. In order to succeed in application for stay of execution, an Applicant must satisfy the court that he has brought the application without unreasonable delay; that substantial loss may result to him unless the order is made; and that security has been given by the Appellant.
11. The trial court delivered on 14/8/2025. This application was filed on 3/9/2025 which is about 20 days later. The delay is not unreasonable.
12. The Appellants have expressed that they stand to suffer substantial loss should the orders of stay not be granted as they will be evicted from the suit land where they claim to live and to be their source of livelihood with their families. They also claimed that should they be evicted, their appeal will be rendered nugatory. They added that they have filed a suit in this court for a claim of adverse possession.
13. The Respondent does not deny that the Appellants live on the suit land. He only complains that he will be denied enjoyment of the fruits of his judgment if stay is granted. The Appellants have demonstrated that they stand to suffer substantial loss should the orders for stay of execution not be granted. The court is persuaded that the appeal may be rendered nugatory. The memorandum of appeal raises arguable issues.
14. The Appellants have offered security for costs, proposing the sum of Kshs. 100,000/= or an appropriate undertaking. The court allows prayer 4 of the application dated 2/9/2025 and directs that the Appellants shall deposit this sum in court within the next 21 days.

The costs of the application to abide the outcome of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 9TH DAY OF DECEMBER 2025.

K. BOR

JUDGE

In the presence of: -

Diana Kemboi- Court Assistant

No appearance for the parties

