

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCA NO E018 OF 2025

BENSON NGANGA

KAMAU.....APPELLANT

VERUS

SAMUEL KAMUHU KAMAU & 4 OTHERS.....RESPONDENTS

RULING

***(Appeal from the Ruling of Hon Nthuku J.N - P.M in Ol-kalou
PMC ELC No. E006 OF 2025 delivered on 3rd September,
2025)***

The Application before me dated 9/9/2025 brought under Certificate of urgency seeks that there be a stay of execution of the Judgment and Decree in Ol-kalou PMCELC No. E006 of 2025 pending the hearing and determination of the Appeal herein. Secondly, that there be a temporary injunction restraining the Respondents and those holding Title/authority under them from entering, using, occupying, developing and/or interfering in any manner whatsoever with the Appellant's use and possession of L.R No. NYANDARUA/MAWINGO SALIENT/7839.

The grounds upon which the Application is made are that Judgment was entered on 3/9/2025 dismissing the Appellant's claim of non-interference with his ownership of the above land. He is apprehensive that his Title over the suit land is at risk of being

cancelled in compliance with the Judgment following which the Appellant stands the risk of being evicted from the land in spite of his massive development of the same leading to substantial loss. This would compromise the substratum of the Appeal rendering the Appeal, if successful, nugatory.

The Respondents, Samuel Kamuhu Kamau, Zachary Njoroge Kamau, Elijah Gacau Kamau, Peter Mburu Kamau and Samson Karuga Kamau responded in a joint Replying Affidavit sworn on 14/10/2025 as follows:

In the Judgement delivered on 3rd September 2025 in favour of the Respondents the Title of parcel No. NYANDARUA/MAWINGO SALIENT/7839 was cancelled so that the parcel of land reverts back to the Appellant's father who is now deceased and there is no way the Respondents are going to transfer or interfere with the suit property when it is in the name of a deceased person who is their father, the Appellant has already evicted his own mother who is currently staying with one of her sons while her parcel is part of the suit property. They further depone that the land belonging to the Appellant is distinct from the parcel belonging to his brothers and their mother. Accordingly, there is no way the cancellation of the Title is going to interfere with the land of either the Appellant or the Respondents. They are of the view that the Appellant is only trying to deny the Respondents the fruits of their judgement by refusing to pay the costs awarded to them in the lower Court. They argue that it would be safer having the suit land in the name of the Appellant's deceased father rather than being

in the name of the Appellant pending the hearing of the Appeal. They therefore urge the Court to dismiss the Application dated 9/9/2025 with costs.

Having gone through the Application and the Response and the Judgment of the lower Court, I find that the cancellation of a Title is such a draconian step. This is not to say that the lower Court is wrong. It is not in the mandate of this Court to determine the issue at this stage. This will be decided later. However, should the Title held by the Appellant be cancelled and it later turns out that the lower Court's Judgment is overturned, the land may have changed hands, transferred to third parties and/or leased to other people and the process of reversing such changes may be either so expensive or it may affect other people so adversely. This is what rendering the Appeal nugatory is all about. In the premises, it is of paramount importance that the Status Quo be maintained to ensure that the suit land is intact and available to the ultimate successful party to have the land available for him.

I therefore grant the Orders sought in the Appellant's/Applicant's Application dated 9/9/2025. But the costs awarded to the Respondents in the lower Court shall be paid to them. The costs of this Application shall abide the result of the Appeal.

Ruling dated, signed and delivered at Nyandarua this 22nd Day of January 2026.

MUGO KAMAU

JUDGE

In the presence of: -

Court Assistant - Samson.

Mr. Komu for the Appellant.

Mr. Gathumbi for the Respondents.