



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chepkwony v Kamoing (Sued as the Personal Representative of the Estate of Elijah Kamoing) (Environment and Land Appeal E015 of 2024) [2026] KEELC 135 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 135 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**  
**ENVIRONMENT AND LAND APPEAL E015 OF 2024**  
**LA OMOLLO, J**  
**JANUARY 22, 2026**

**BETWEEN**

**JOSEPH CHEPKWONY ..... APPELLANT**

**AND**

**JOSHUA KIPRONO KAMOING (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF ELIJAH KAMOING) .. RESPONDENT**

**RULING**

1. This ruling is in respect of the Appellant/Applicant's Notice of Motion application dated 19<sup>th</sup> March, 2025. The application is expressed to be brought under Sections 1A, 1B & 3A of the [Civil Procedure Act](#) and Order 42 Rule 6 of the Civil Procedure Rules.
2. The application seeks the following orders;
  - a. Spent
  - b. Spent
  - c. That this Honourable Court be pleased to issue a stay of execution of the judgement and decree delivered (sic) on 1<sup>st</sup> October, 2024 by the Honourable Magistrate in MELC (sic) Case No. 70B of 2021, pending the hearing and determination of this appeal.
  - d. Spent
  - e. That this Honourable Court be pleased to issue an order restraining the Respondent, their (sic) agents, employees, or any other person acting under their (sic) direction from selling, transferring, alienating, or in any way disposing of the property known as Land Reference Number LR Kericho/Chemoiben/129, pending the hearing and determination of this appeal.



- f. Spent
  - g. That this Honourable Court be pleased to issue an order maintaining the status quo, in which the Appellant remains in peaceful possession and occupation of the property known as Land Reference Number LR. Kericho/Chemoiben/129, pending the hearing and determination of this appeal.
  - h. That the costs of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of the Appellant/Applicant sworn on 19<sup>th</sup> March, 2025.

### **Factual Background.**

4. The Appellant/Applicant filed the Memorandum of Appeal dated 28<sup>th</sup> October, 2024 appealing from the judgement delivered in Kericho CM ELC Case No. 70B of 2021 on 1<sup>st</sup> October, 2024.
5. The grounds of appeal are as follows;
- a. The learned trial Magistrate erred in law and fact by awarding the Appellant the sum of Kshs. 3,320,000 and not considering the developments by the Appellant.
  - b. The learned Magistrate erred in entertaining a time-barred claim, contrary to the provisions of the *Limitation of Actions Act* (Cap 22), given that the sale took place nearly 20 years ago. (sic)
  - c. The learned Magistrate erred in law by failing to consider the doctrine of bona fide purchaser for value without notice, as the Appellant bought the land in good faith and without knowledge of any legal defect in title.
  - d. The learned Magistrate erred by ordering a refund based on the original purchase price without considering the current market value of the land and the substantial improvements made by the Appellant, resulting in unjust enrichment to the Respondent's estate. (sic)
  - e. The learned Magistrate erred by failing to acknowledge the Appellant's adverse possession of the land for nearly 20 years, which confers rights under Kenyan law.
  - f. The learned Magistrate failed to consider that any refund to the Respondent, if warranted, should have been offset against his share in the estate, avoiding double recovery. (sic)
  - g. The learned Magistrate erred in failing to appreciate that the Appellant's improvements, valued at approximately KES 50,077,000, significantly increased the land's value, warranting compensation.
6. The Appellant/Applicant prays for orders that;
- a. Allows the appeal and sets aside the entire judgement and decree of the Honourable Magistrate delivered on 1<sup>st</sup> October, 2024. (sic)
  - b. Substitutes the judgment of the trial Court with an order dismissing the Respondent's claim and recognizing the Appellant's right to the land under the doctrines of bona fide purchaser for value without notice and adverse possession.
  - c. In the alternative, orders that any refund to the Respondent (sic) be based on the current market value of the land and compensates the Appellant for the substantial improvements made.



- d. Grants any other relief that this Honourable Court deems just and fit to grant. (sic)
- e. Costs of the appeal.
7. The application under consideration first came up for hearing on 23<sup>rd</sup> June, 2025 when the Court issued directions that it be canvassed by way of written submissions.
8. It was mentioned to confirm filing of submissions and reserved for ruling on 22<sup>nd</sup> July, 2025.

**The Appellant/Applicant's Contention.**

9. The Appellant/Applicant contends that on 1<sup>st</sup> October, 2024 the trial Court delivered its judgement in Kericho CM ELC Case No. 70 B of 2021.
10. The Appellant/Applicant also contends that it was the finding of the Learned Trial Magistrate that the then administrator of the estate of Elijah Kamoing Boldo (deceased) one Joshua Kiprono Kamoing now deceased, did not have capacity to sell land parcel No. Kericho/Chemoiben/129 to him.
11. The Appellant/Applicant further contends that the Learned Trial Magistrate held that the sale of the suit property was therefore invalid and thereafter issued an order that the Respondent refunds him Kshs. 3,320,000/=.
12. It is his contention that he has lived on the suit parcel of land since year the 2005 and has made substantial improvements on the land including constructing a house worth Kshs. 50,077,000/=.
13. It is also his contention that he had a distinguished career in public service where he served as a District Commissioner. He goes on to state that he has now retired and the suit parcel of land represents his lifetime investment.
14. It is further his contention that losing the said parcel of land will cause him irreparable harm and deprive him of his primary financial security.
15. He contends that his appeal has high chances of success. He reiterates that the then administrator of the estate of the deceased lacked the legal capacity to sell the suit parcel of land.
16. He also contends that the Respondent's claim is statute barred and that he (Appellant/Applicant) is a bona fide purchaser for value without notice.
17. He further contends that the finding of the trial Court allowed the estate of the deceased to be unjustly enriched as it did not consider the significant improvements that he had made on the land or its current market value.
18. It is his contention that if the Court does not issue orders of stay of execution then he will lose his lifetime investment. He goes on to state that he has lived on the suit parcel of land for a period of about twenty years.
19. It is also his contention that the balance of convenience tilts in favor of maintaining the status quo. He goes on to state that the Respondent is the beneficiary of the estate of the deceased and he will not suffer any prejudice if the orders sought are granted.
20. It is further his contention that he is willing to abide by any terms or conditions that the Court may impose if it issues orders of stay of execution.
21. He ends his deposition by stating that this Court should issue an order of stay of execution of the judgement of the trial Court pending hearing and determination of the appeal.



22. The Respondent did not file any response to the application.

**Issues for determination.**

23. The Appellant/Applicant filed his submissions on 9<sup>th</sup> July, 2025 while the Respondent did not file any submissions.
24. The Appellant/Applicant submits that the Respondent was served with the application under consideration and he opted not to file any response.
25. The Appellant/Applicant also submits that his documentary evidence has not been challenged and he is therefore entitled to the orders sought.
26. The Appellant/Applicant further submits that his application is not only unopposed but it is also well grounded in law and is aimed at preventing his appeal from being rendered nugatory.
27. The Appellant/Applicant relies on the judicial decisions of *Trust Bank Ltd vs Ajay Shah & 3 Others* [2003] eKLR and *Gichinga Kibutha vs Caroline Nduku* [2018] eKLR in support of his submissions.
28. The Appellant/Applicant then submits on whether he has met the threshold for grant of orders of stay of execution and preservation of the suit parcel of land pending appeal.
29. The Appellant/Applicant relies on Order 42 Rule 6(2) of the Civil Procedure Rules, the judicial decision of *Butt vs Rent Restriction Tribunal* [1982] KLR 417 and submits that he has moved the Court promptly.
30. The Appellant/Applicant reiterates that he has lived on the suit parcel of land for a period of close to twenty years and has made substantial developments on it.
31. The Appellant/Applicant submits that his possession of the suit parcel of land has been peaceful and uninterrupted.
32. The Appellant/Applicant also submits that if the Court does not issue orders of stay, he likely to be evicted which will be catastrophic and irreversible.
33. The Appellant/Applicant further submits that he stands to lose his home, lifetime investment and the familial value he has attached to the land. It is his submissions that no amount of compensation or refund will truly remedy such a loss.
34. It is the Appellant/Applicant's submissions that he has sufficiently demonstrated the real and imminent risk of substantial loss if orders of stay of execution are not granted.
35. The Appellant/Applicant relies on Articles 48 & 50 of *the Constitution* of Kenya, the judicial decisions of *Kenya Shell Ltd vs Benjamin Karuga Kibiru & another* [1986] KLR 410 and *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others* [2014] eKLR in support of his submissions.
36. The Appellant/Applicant submits that the nature, scale and permanence of the potential loss coupled with the unique personal and financial stakes involved, is sufficient to demonstrate substantial loss which warrant the immediate intervention of this Court.
37. The Appellant/Applicant relies on the judicial decisions of *Board of Governors Moi High School Kabarak vs Malcom Bell* [2013] eKLR, *RWW v EKW* [2019] eKLR and submits that the substratum of the appeal will be completely lost if the Respondent is allowed to evict him before the appeal is heard.



38. It is also the Appellant/Applicant's submissions that he is willing to provide security as the Court may deem just to grant. He relies on the judicial decision of Absalom Dova v Tarbo Transporters [2013] eKLR in support of his submissions.
39. The Appellant/Applicant concludes his submissions by urging the Court to allow his application as prayed.

### **Analysis and Determination.**

40. I have considered the Appellant/Applicant's application and submissions. It is my view that the only issue that arises for determination is whether the Appellant/Applicant's application has merit.
41. Before proceeding any further, I have observed that on the cause title of the application under consideration, the Respondent is described as "Zacharia Kipkemoi A. Kamoing suing (sic) as the personal representative of the estate of Elijah Kamoing Boldo".
42. A perusal of the Memorandum of Appeal filed herein shows that the Respondent is "Joshua Kiprono Kamoing suing (sic) as the personal representative of the estate of Elijah Kamoing Boldo."
43. A further perusal of the Memorandum of Appeal shows that the appeal has been filed from the Judgement delivered in Kericho CM ELC Case No. 70B of 2021. The parties in the said matter are Joshua Kiprono Kamoing (Suing as the personal representative of the estate of Elijah Kamoing Boldo) versus Joseph Chepkwony.
44. It is therefore evident that the Respondent in the application under consideration is different from the Respondent in the Appeal.
45. It is also evident that the Respondent in the application under consideration was not a party in the matter before the trial Court.
46. Upon further perusal of the Court record, I have noted that there is an affidavit of service filed on 20<sup>th</sup> June, 2025. It is sworn by Benard Obiero on 29<sup>th</sup> May, 2025. He deposes as follows;

- “ 1. That I am an authorized Court process server hence competent to swear this affidavit.
2. That on 28.05.2025, I received copies of a hearing notice dated 27.05.2025 attached together with an application dated 19.05.2025 (sic) from the firm of Sang & Sang Advocates LLP, Koin-Eei Plaza, 2<sup>nd</sup> Floor, Temple Road, and P.O Box 338-20200, Kericho, for service upon Zacharia Kipkemoi A. Kamoing, the Respondent herein.
3. That on the 28.05.2025, I served the documents upon the Respondent personally.
4. That on the material day I travelled to the Respondent's home that is located near at (sic) Litein Town and which home is opposite Issaco Services Petrol Station, the place that is well known to me having been there previously for another service and that upon arriving, I was able to meet with him personally. (sic)
5. That there, I explained the purpose of my visit and after which I served the Respondent with the said documents.



6. That the Respondent accepted the service by retaining his copies and that he signed at the front of my copy of the hearing notice herewith returned as duly served to the Respondent together with the accompaniments (sic)..."
47. It is important to note that in the affidavit of service set out above, Benard Otieno deposes that he served the application dated 19<sup>th</sup> May, 2025 upon Zacharia Kipkemoi A. Kamoing.
48. A perusal of the Court record shows that there is no application dated 19<sup>th</sup> May, 2025 that has been filed.
49. The only application on the Court record that is pending is the application under consideration which is dated 19<sup>th</sup> March, 2025.
50. It is therefore logical to deduce that the said affidavit of service was with respect to the application under consideration.
51. Further, on 23<sup>rd</sup> June, 2026, Counsel for the Appellant/Applicant informed the Court that he had filed an affidavit of service sworn by Benard Obiero on 29<sup>th</sup> May, 2025 as evidence of service of the application dated 19<sup>th</sup> March, 2025.
52. From the foregoing, it is evident that the application under consideration was served upon one Zacharia Kipkemoi A. Kamoing who is not a party to the present appeal.
53. In the judicial decision of Ibrahim Isaack and Company Advocates v Monarch Insurance Company Ltd [2025] KEHC 13709 (KLR) the Court held as follows;
- “...a party is bound by its pleadings and the Court cannot add to a pleading what has not been pleaded or purport to fill in gaps and goofs resulting from poor draftsmanship.
5. . Especially in such a case where the errors are fundamental and of substance rather than of procedure. While procedural errors may be cured by dint of Article 159(2) of *the Constitution*, fundamental errors such as the ones in this Application go to the root of the Application, hence cannot be cured by Article 159(2)...
7. Having found that this Application is in substance, incompetent and misconceived and of having defects that go to the root of it, it is hereby dismissed with no order as to costs.” (Emphasis mine)
54. I have before me an application arising from a judgment of a trial Court. It seeks orders against a person who was not a party to the suit before the trial court.
55. I also have before me an affidavit of service in respect of service of the application under consideration upon a person who is a stranger to proceedings before the trial Court.
56. One of the cardinal principles of natural justice is that a party shall not be condemned unheard. The question that follows is whether Joshua Kiprono Kamoing has notice this application. The fact that he neither responded to this application nor filed submissions makes it highly unlikely.
57. I am unable to determine this application on its merits.



**Disposition.**

58. Taking the foregoing into consideration, I find that the Appellant/Applicant's application is incompetent. I hereby strike it out with no order as to costs.

59. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Kipkorir for Kiletyen or the Appellant/Applicant.

Respondent - Absent

Court Assistant; Mr. Joseph Makori.

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