

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA**

**ELCA NO E024 OF 2025**

**JOSEPH GATHAKU**

**MBUGUA.....APPELLANT**

**VERSUS**

**DAVID NJOROGE KAMAU.....RESPONDENT**

**RULING**

***( Appeal from the Judgment of Hon J.N.Nthuku - SPM delivered on 25<sup>th</sup> September, 2025 in the PM’s Court at Ol-Kalou in MCELC No. E046 OF 2024)***

In the Notice of Motion dated 6/10/2025, Joseph Gathaku Mbugua, the Appellant urges this Court to issue an Order of Stay of Execution of the Judgment delivered on 25/9/2025 in Nyandarua (I believe Ol-kalou) CM ( Principal) ELC No. E046 OF 2024 pending the hearing and determination of the Appeal herein.

The grounds upon which the Application is premised are that there is already a Judgment on record dismissing the Appellant’s case where the subject matter is family land. In the Judgment, the lower Court ordered the Applicant to transfer the suit land into the name of the Respondent. He is of the view that unless this Court stays these Orders pending the hearing and determination of the Appeal, the Applicants will finally lose their inheritance since the

land may thereafter be disposed of after such transfer and the Applicant would suffer substantial loss as he derives his livelihood from the said land. He further states that the Appeal, if successful, would be rendered nugatory, moot and a mere academic exercise, execution having proceeded.

The Applicant also urges that the suit has been brought in Court without undue delay. Assuring the Court that the Respondent stands to suffer no prejudice should the orders be granted as he does not occupy or utilize the land, the Applicant undertakes to abide by any condition(s) given by the Court regarding security.

In his Affidavit in support of the Application sworn on even date, the Applicant says that an order of Injunction was issued restraining him from dealing with the land, yet the land was inherited from his mother and he makes livelihood from cultivating the land as well as rearing animals thereon together with his grand-daughter, urging the Court that he is advanced in age being 95 years old and that he has brought the Application without undue delay. And since the Respondent has never occupied the suit land, then he stands to suffer no prejudice.

No response was filed against the Application.

This being land and not a monetary Decree, I agree with the Applicant that the Appeal would be rendered nugatory if successful after the Decree has been executed. I therefore grant the Orders sought by the Applicant in the Motion dated 6/10/2025. However, Title Number Nyandarua Mawingo

Salient/4238 should not change hands and the same should be deposited in Court within the next 7 Days. Costs shall abide the results of the Appeal herein.

**Ruling dated, signed and delivered at Nyandarua this 29th Day of January 2026.**

**MUGO KAMAU**  
**JUDGE**

**In the presence of: -**

Court Assistant - Samson.

Ms. Chemngetich for the Appellant.

Mr. Mutuku Mbithi for the Respondent.