



**Muindi & 3 others (Suing on Their Own Behalf and as Officials of Village D Welfare Association Ngelani) v Aldus Limited & 3 others (Environment and Land Case E029 of 2021) [2026] KEELC 289 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 289 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE E029 OF 2021  
NA MATHEKA, J  
JANUARY 28, 2026**

**BETWEEN**

**RICHARD NZIOKA MUINDI ..... 1<sup>ST</sup> PLAINTIFF  
CONSOLATA MWATHI ..... 2<sup>ND</sup> PLAINTIFF  
MARY MUSYIMI ..... 3<sup>RD</sup> PLAINTIFF  
DANIEL MBAU ELIJAH ..... 4<sup>TH</sup> PLAINTIFF  
SUING ON THEIR OWN BEHALF AND AS OFFICIALS OF VILLAGE D  
WELFARE ASSOCIATION NGELANI**

**AND**

**ALDUS LIMITED ..... 1<sup>ST</sup> DEFENDANT  
GULF EMIRATES HOLDINGS LIMITED ..... 2<sup>ND</sup> DEFENDANT  
HIGHWAY INDUSTRIAL PARK LIMITED ..... 3<sup>RD</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application is dated 27<sup>th</sup> March 2025 and is brought pursuant to Order 42 rule 6 and Order 51 rule 1, of Civil Procedure Rules, Article 40 and 2(5) and (6) of *the Constitution* of Kenya, the International Covenant on Economic, Social and Cultural Right (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and Peoples' Rights (Banjul Charter), UDNR, CEDAW seeking the following orders;
  1. That this Honourable Court be pleased to order that this matter be certified as urgent and service be dispensed with in the first instance.



2. That this Honourable Court be pleased to order a stay of execution of the Judgment dated and delivered on 4<sup>th</sup> March, 2025 pending the hearing and determination of this application.
  3. That this Honourable Court be pleased to order a stay of execution of the Judgment dated and delivered on 4<sup>th</sup> March, 2025 pending the hearing and determination of the intended Appeal by the Applicants.
  4. That the 1<sup>st</sup> to 3<sup>rd</sup> Respondents be and are hereby restrained from forcefully or otherwise evicting/ejecting the Applicants, their agents, servants and all others claiming through them from the suit land until the hearing and determination of the intended appeal.
  5. That costs be provided for.
2. It is supported by the following grounds that this Honourable Court entered Judgment against the Applicants on 4<sup>th</sup> March, 2025 with an order evicting the Applicants and their servants, agents and/or assignees who may be upon or in possession of the suit properties without giving a grace period to vacate or to look for alternative dwellings. The Applicants are in physical possession of the land and have been in occupation of the suit land for more than 30 years which is their ancestral land. The Applicants have an arguable appeal with high chances of success and if a stay is not granted, the appeal shall be rendered nugatory. If stay of execution is not granted, the Applicants as well as members of Village D Welfare Association will suffer substantial loss as they have nowhere else to call home, their houses, structures, animal sheds crops shall be destroyed and they shall be rendered homeless and vulnerable. Without prejudice to all the above, the 2<sup>nd</sup> Applicant Consolata Mwathi died on or about 5<sup>th</sup> March, 2023 and no substitution was done within one year hence rendering all proceedings after 5<sup>th</sup> March, 2024 a nullity. The Right to housing and the right not to be deprived of shelter, rights to freedom of movement and to choose one's residence, right to security of the person, right to education, right to property, right to work, right to family life and rights to economic, social, cultural development among other rights recognized internationally and locally stand to be infringed. The Respondents shall not suffer any prejudice if stay orders are granted as everyone shall continue possessing and living in their respective portions. The Applicants are willing to abide by this Honourable Court's directives as to security and other costs.
3. The second application is dated 16<sup>th</sup> June 2025 and is brought under Section 1A, 1B, 3, 3A of the Civil Procedure Act, Order 42, Rule 6, Order 51 rule 1 of the Civil Procedure Rules, Environment and Land Court Act, Clause 32 ELC Practice Directions 2014, Article 40 of the Constitution seeking the following orders;
1. That this application be certified as urgent and be heard ex-parte in the first instance.
  2. That this Honourable Court be pleased to issue a stay of execution of the decree dated 4<sup>th</sup> March, 2025 pending the hearing and determination of this application.
  3. That there be a stay of execution of the Judgment and Decree dated 4<sup>th</sup> March, 2025 pending the hearing and determination of the application dated 27<sup>th</sup> March, 2025.
  4. That the status quo be maintained pending the hearing and determination of this application and the application dated 27<sup>th</sup> March, 2025.
  5. That costs be in the cause.
4. It is based on the following general grounds that the Kenya Police, in particular the OCPD Mavoko SNP Police Station, Athi River and others have organized themselves in readiness for the eviction



process. They filed an application for stay pending appeal dated 27<sup>th</sup> March, 2025 and it is only just that the stay application is heard and determined to finality as the same shall be of no use and rendered nugatory if an eviction is carried out. The decree is defective as it does not state the fate of the Plaintiff's case and it was issued on 16<sup>th</sup> March, 2025 which is a Sunday. The eviction exercise is likely to be brutal and forceful as the Defendants have not bothered to inform the Applicants or their lawyers of the date of eviction and instead, the Applicants are finding out from the police and other sources. The eviction is not in compliance with Section 152G of the Land Act which provides the mandatory procedure during evictions. The process is not in compliance with the United Nations Guidelines on Evictions as enunciated by The United Nations Office of the High Commissioner for Human Rights in General Comment No. 7 "The right to adequate housing (Art.11.1): forced evictions. (20/05/97) CESCR General comment 7. (General Comments)." Paragraph 15 and 16 provides the procedure and guidelines in cases of eviction. The eviction may result to demolition yet there is no demolition order and moreover the occupants have not been told to remove their houses and structures so as to prevent further loss. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants have not identified their land as per their more than 50 titles and it is likely that they may encroach on land that is not part of their title. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants through their lawyers did not give our lawyers a copy of the draft decree to confirm the correctness of the draft decree as per Order 21 rule 8. Innocent people who were not parties to the suit or members of the association may be affected as a result of the eviction exercise. The occupants have been in the land parcel for decades and the same is akin to ancestral land and it would be inhuman for them to be thrown out from a place they call home with nowhere else to go and set up anew homes. The doctrine of *lis pendens*

5. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendant raised a preliminary objection to the application dated 16<sup>th</sup> June 2025 on the grounds that;
  1. The Application is misconceived, incompetent, incurably defective and not tenable in law.
  2. The Application is *res judicata*.
  3. The Application constitutes an abuse of the court process, as it seeks the same reliefs as those sought in the Plaintiffs' Application dated 27<sup>th</sup> March, 2025, which remains pending before this Honourable Court.
  4. The Application is inherently self-defeating, in that the prayers sought would lapse upon it being granted.
6. This court has considered the applications, preliminary objection, responses and submissions therein. The Defendant's submission is that the application dated 16<sup>th</sup> June 2025 herein is *res judicata*
7. Section 6 of the Civil Procedure Act provides that;

"No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they are any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed."
8. In the case of Kenya Bankers Association versus Kenya Revenue Authority, 2019 eKLR the court had this to say on the issue of *Res sub judice*;

"in addition, it is clear that the matters in issue in the suits or proceedings are directly and substantially the same. The parties in the suits or proceedings are the same. The *ex parte*



applicant herein, is litigating on behalf of its 47 members, some of whom are parties in the existing suits. The suits are pending in the High Court which has jurisdiction to grant the relief claimed.

9. A cursory look at the prayers sought in this case show that they relate to the same subject matter. However, the principle of sub judice does not talk about the “prayers sought” but rather “the matter in issue” I find that the matters in issue in the suits are substantially the same. In *Re the matter of the Interim Independent Electoral Commission*, the Supreme Court cited with approval the Australian decision where it was held: -

“... we do not think that the word “matter” ...means a legal proceeding, but rather the subject matter for determination in a legal proceeding. In our opinion there can be no matter...unless there is some right, duty or liability to be established by the determination of the court...”

10. The rationale behind sub-judice rule is to prevent situation of having conflicting orders emanating from the same subject matter. In the case of *David Ndi & others vs Attorney General & Others 2021 eKLR*, a bench of five Judges inter alia stated;

“The rationale behind this provision (Section 6 of the *Civil Procedure Act*) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts, and the court will....”

11. Section 7 of the *Civil Procedure Act* Provides

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties. or between parties under whom they or any of them claim. litigating under the same title. in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised. and has been heard and finally decided by such court.”

12. Expounding further on the essence of the doctrine this Court in *John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others (2015) eKLR* pronounced itself as follows;

“The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court’s limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”

13. I have perused the said application 16<sup>th</sup> June 2026 and the one dated 27<sup>th</sup> March 2025 mentioned above and find that they seek the same orders. The parties are the same and the subject matter is the same as they are in the same file. I find this application an abuse of the court process and is subjudice and is struck off with costs to the Defendants.



14. On the application dated 27<sup>th</sup> March 2025 seeks a stay of execution of the Judgment dated and delivered on 4<sup>th</sup> March, 2025 pending the hearing and determination of the intended Appeal by the Applicants.
15. I have considered the application and the submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the Civil Procedure Rules as follows;

“No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred, shall be at liberty, on an application being made, to consider such application and to make such orders thereon as may to it seem just, any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have the orders set aside.”

16. Order 42, rule 6 states:

“No order for stay of execution shall be made under sub-rule (1) unless:-

- a. The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

17. The appellants need to satisfy the Court on the following conditions before they can be granted the stay orders:

1. Substantial loss may result to the applicant unless the order is made.
2. The application has been made without unreasonable delay, and
3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.

18. The principles governing the exercise of the court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of Reliance Bank Ltd (In Liquidation) vs Norlake Investments Ltd – Civil Appl. No. Nai. 93/02 (UR), thus;

Hitherto, this Court has consistently maintained that for an application under rule 5(2) (b) to succeed, the applicant must satisfy the court on two matters, namely:-

1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”



19. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange vs Richard Nyagaka Tongi & 2 Others* eKLR where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;

..... The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”

20. In the case of *Mohamed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat* (2013) eKLR, the court stated that;

That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right .....

21. We are further guided by the court’s decision in *Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others* Civil Appeal No. 291 of 1997, at Page 4 as follows:

... the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . . the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.”

22. The Applicants submitted that the rendered Judgment directed the Appellant/Applicant’s case be dismissed and allowed the Respondents’ counter claim. That the court issued an eviction order against the Appellant/Applicant. That the eviction is not in compliance with Section 152G of the *Land Act* which provides the mandatory procedure during evictions. The process is not in compliance with international Guidelines on Evictions that the eviction may result to demolition yet there is no demolition order and moreover the occupants have not been told to remove their houses and structures so as to prevent further loss. That they have resided there for over five decades and they have a claim in adverse possession.

23. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents stated that the Plaintiffs do not have an arguable appeal as the issues raised in their intended appeal were fully considered and conclusively determined by the court.

24. I find that no draft memorandum of appeal was attached to the application. I find that the grounds of appeal raised in the application do not raise an arguable appeal and I do not find that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. From the judgement the court considered the facts and evidence before it and made a determination on the same. It is not clear whether the Respondent is in the process of execution of the decree or the judgement delivered by the court. I find that the applicant has not fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is not merited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF JANUARY 2026.**



**N.A. MATHEKA**  
**JUDGE**

