



**Ngaine v Mwanirua (Sued as the personal representatives of Charles Mwanirua - Deceased) (Environment and Land Appeal E037 of 2024) [2026] KEELC 125 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 125 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E037 OF 2024  
BM EBOSO, J  
JANUARY 21, 2026**

**BETWEEN**

**M'ITHINJI NGAINE ..... APPELLANT**

**AND**

**JOHN KINOTI MWANIRUA (SUED AS THE PERSONAL REPRESENTATIVES OF CHARLES MWANIRUA - DECEASED) ..... RESPONDENT**

*(An appeal against the Ruling of the Senior Principal Magistrate Court at Nkubu [Hon. R. Ongira SRM] dated 30/4/2024 in Nkubu SPMC E & L Case No. E055 of 2021)*

**RULING**

1. From a perusal of the evidentiary materials presented in this appeal at this interlocutory stage, it emerges that the appellant instituted Nkubu SPMC E & L Case No. E055 of 2021 seeking: (i) an order decreeing the respondent to transfer to him land parcel numbers Mweru 111/1327 and Mweru 111/444 [the suit parcels] and in default, the executive officer of the court to sign the necessary documents to effect the said transfers; and (ii) an order awarding him [the appellant] costs of the suit. In response to the appellant's suit, the respondent filed a defence and counterclaim in which he contested the appellant's claim and, by way of counterclaim, prayed for: (i) a declaration that he [the respondent] was the absolute proprietor of the suit parcels and had constitutionally protected and indefeasible titles to the parcels; (ii) an order decreeing eviction of the appellant from the suit parcels under the supervision of the OCS of Igoji Police Station; (iii) an order decreeing demolition of all buildings and/or structures erected on the suit parcels by the appellant; and (iv) an order awarding him costs of the suit.
2. It also does emerge that the appellant fully prosecuted his claim in the said court and the respondent, similarly, prosecuted his defence and counterclaim in the same court and cause. Ultimately, the trial court rendered a merit judgement dated 11/1/2024, in which it found in favour of the respondent and



- decreed the appellant to yield vacant possession of the suit parcels to the respondent within 60 days and directed the OCS of Igoji Police Station to enforce the decree in the most humane manner. The trial court further decreed the appellant to remove his structures and buildings from the suit parcels within 60 days. Lastly, the trial court awarded the respondent costs of the suit.
3. Against the above background, the appellant moved to the Land Adjudication Office and caused an appeal to the Minister to be registered under Section 29 of the *Land Adjudication Act*, to wit, Appeal No. 141 of 2024.
  4. Seized of the above appeal which had been registered post-judgment, the appellant went back to the trial court with an application seeking a review of the judgment of the trial court under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. In addition to inviting the trial court to review and set aside its judgement, the appellant prayed for various interlocutory injunctive orders that were to abide the “hearing and determination of the suit.”
  5. While seeking the review and the setting aside of the judgment of the trial court, the appellant contended that there was a glaring error on the record in that there was an oversight of a crucial fact in the sense that the suit parcels were the subject matters of a pending appeal to the Minister under Section 29 of the *Land Adjudication Act*. The appellant argued that despite disclosure that the dispute was pending before the Minister, the trial court proceeded to hear and determine the case on merits, adding that the case proceeded on “a mistaken belief of jurisdiction that was not available to the court”. The application for review was vehemently opposed.
  6. Upon hearing the application, the trial court rendered a ruling dated 30/4/2024, in which it analyzed the application, the evidence and the submissions and came to the finding that the appellant had not satisfied the criteria for review of a court’s own judgment under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. The trial court dismissed the application for lack of merit.
  7. Aggrieved by the post-judgment ruling of the trial court, the appellant brought this appeal vide a memorandum of appeal dated 15/5/2024, in which he faulted the trial court for, inter alia, “affirming the judgment of 11/01/2024 which was entered ultra vires the mandate of the trial court especially in light of the appellant’s appeal pending before the Minister”.
  8. Subsequent to the lodging of the appeal, the appellant brought a notice of motion dated 7/8/2024, in which he sought the following verbatim reliefs:-
    1. Spent
    2. Spent
    3. That the Honourable Court be pleased to stay the notice to show cause dated 22/7/2024 in Nkubu PMCC ELC No E055 of 23021 and all other proceedings therein pending hearing and determination of the appeal.
    4. Spent
    5. That this Honourable Court do hereby grant an order of temporary stay of execution of the judgment/decreed and all proceedings in Nkubu SPMC ELC No E055 of 2021 delivered on 11/1/2024 pending the hearing and determination of this appeal.
    6. Spent
    7. That an order of temporary injunction do issue restraining the respondents, their agents, relatives or any other person authorized by them from trespassing into, entering into, building



in, subdividing, selling, leasing, evicting or in any other way interfering with the applicant's peaceful possession, occupation use and development of land LR No Imenti South/Mweru 111/444 and 1327 pending the hearing and determination of the appeal herein.

8. Spent
9. That an order of inhibition do issue inhibiting any dealings with land parcels LR Nos Imenti South/Mweru 111/444 and 1327 pending hearing and determination of the appeal herein.
10. That the Honourable Court do issue an order of stay of all proceedings in Nkubu SPMC ELC No E055 of 2021 pending hearing and determination of the application and subsequent hearing and determination of the appeal.
9. The above application is the subject of this ruling. It was premised on the grounds outlined in the motion and in the applicant's supporting and supplementary affidavits dated 7/8/2024 and 1/11/2024, respectively. It was canvassed through written submissions dated 1/11/2024, filed by M/s Thangicia M David & Co Advocates and oral submissions tendered in court on 3/12/2025.
10. The case of the applicant is that, he is aggrieved by the judgement of the trial court rendered on 11/1/2024 in Nkubu SPMC E & L Case No E055 of 2021. He sought a review of the said judgment but the trial court denied him the review vide a ruling dated 30/4/2024. He has lodged an appeal against the said ruling. He adds that his appeal to the Minister, to wit Appeal No 141 of 2024 is pending hearing and determination by the Minister under Section 29 of the *Land Adjudication Act*.
11. The appellant adds that he resides on the suit parcels with his family and utilizes the suit parcels to the exclusion of the respondent. He further states that the respondent has served him with a notice to show cause why he should not be committed to civil jail and he is now threatening to evict him on the basis of the judgement and decree of the trial court. He contends that if evicted, he will suffer "great and irreparable loss". He further states that if the orders sought are not granted, he will suffer substantial loss and the appeal will be rendered nugatory.
12. The appellant further contends that he has an arguable appeal, adding that the respondent will not suffer any prejudice should the order sought be granted. Lastly, the appellant faults the respondent for not personally swearing a replying affidavit and allowing his advocate to swear the replying affidavit instead.
13. The respondent opposed the application through grounds of opposition dated 29/9/2024 and a replying affidavit sworn on 3/10/2024 by his advocate, Mr Nahashon Karuti. In addition, the respondent filed written submissions dated 31/10/2025. The respondent also tendered oral submissions on 3/12/2025.
14. The case of the respondent is that, the application is incompetent because the applicant has failed to exhibit essential documents that form part of the record of the trial court. He adds that the application is without merit because it is anchored on falsehoods and wilful falsification of records. He terms the application as an abuse of the process of the court, adding that the applicant having failed to demonstrate that he has an arguable appeal, he does not deserve the orders sought.
15. The respondent argues that this appeal hinges on the allegation that there existed an appeal to the Minister under the *Land Adjudication Act*, adding that the trial court properly noted in the impugned ruling that during trial, the appellant did not tender any evidence relating to any subsisting appeal to the Minister. The respondent contends that there is no scintilla of evidence to support the view that the trial court erred in declining to review its judgment, hence the applicant does not have an arguable appeal.



16. The respondent further argues that there has been unexplained delay, adding that the applicant has ignored the requirement for security. He urges the court to reject the application.
17. The court has considered the application, the response to the application, and the parties' respective submissions. The two key issues that fall for determination in the application are: (i) Whether the application meets the criteria upon which this court exercises jurisdiction to grant an order of stay of execution pending the hearing and disposal of an appeal before it; and (ii) Whether the application satisfies the criteria upon which this court exercises jurisdiction to grant an interlocutory injunction in an appeal before it. I will be brief in my analysis and disposal of the two issues.
18. Does the application meet the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal by this court? The relevant criteria has been legislated and is contained in Order 42 rule 6(2) of the Civil Procedure Rules which provides as follows: -  
"No order for stay of execution shall be made under subrule (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."
19. The applicant contends that he resides on the suit parcels. This may be a pointer to likely substantial loss in the event that the decree is executed. But has the applicant satisfied the other requirements?
20. On bringing the application without unreasonable delay, the judgment which the applicant seeks to stay was rendered on 11/1/2024. The trial court decreed the applicant to yield vacant possession of the suit parcels within 60 days. The 60 days period lapsed on 11/3/2024. The post-judgment ruling which is the subject of this appeal related to an application dated 4/3/2024 and was rendered on 30/4/2024. The application for an order of stay of execution [the application under consideration] is dated 7/8/2024 and was filed on the same day.
21. Even if the court were to proceed from the premise that between 4/3/2024 and 30/4/2024, the applicant was pursuing the review mechanism in the trial court, there is absolutely no bona fide explanation tendered to explain the inaction in the period from 11/1/2024 to 4/3/2024 and the subsequent inaction between 30/4/2024 and 7/8/2024. The above inaction was demonstrated against the background where the trial court had decreed eviction of the applicant on expiry of 60 days, reckoned from 11/1/2024. Clearly, no proper explanation has been tendered in relation to the above delay. Consequently, the court comes to the conclusion that there has been unreasonable and unexplained delay in bringing the application.
22. Has the applicant offered any security? In its entirety, the formal application does not make any proposal on the mandatory legislated requirement for security. In fact the applicant did not bother to address the question of security in the formal application. It was only during oral submissions that counsel for the applicant stated the following from the bar:  

"The applicant is a poor man. He cannot raise any form of security. The application is not substantively opposed."
23. Offer of security is a legal requirement which a party seeking an order of stay of execution must satisfy. The applicant is in possession of parcels that he was decreed to vacate within 60 days. He owns parcel number Mweru 111/1753 as is evident from his own affidavit dated 26/9/2025. He is not landless. He, however, wants to remain on the suit parcels without offering any form of security. Clearly, by refusing



to offer any form of security, the applicant has denied the court the proper basis upon which to exercise the discretionary jurisdiction to issue an order of stay of execution.

24. For the above reasons, the court finds that the criteria for granting an order of stay of execution has not been met.
25. Does the application meet the criteria for granting an interlocutory injunction by a third-tier appellate court? This court's powers to grant an injunction when exercising appellate jurisdiction are donated by Order 42 rule 6(6) of the Civil Procedure Rules which provides as follows: -

Notwithstanding anything contained in subrule (1) of this rule, the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just, provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

26. Over the years, Kenya's superior courts have developed principles that guide the exercise of the above jurisdiction (see (i) *Madhupaper International Limited Vs Kerr* [1985] KLR 840; (ii) *Venture Capital & Credit Limited Vs Consolidated Bank of Kenya Ltd*; Civil Application No. 349 of 2003 (174 of 2003 UR); and (iii) *Butt V Rent Restriction Tribunal* (1982) KLR 417).
27. Suffice it to state that, the jurisdiction of a first appellate court to grant an interlocutory injunction under Order 42 rule 6(6) of the Civil Procedure Rules is a discretionary and equitable one. Secondly, the discretion will not be exercised in favour of an applicant whose appeal is frivolous; the applicant must demonstrate that a reasonable argument can be put forward in support of his appeal. Thirdly, the discretion should be refused where it would inflict greater hardship than it would prevent. Fourthly, the applicant must show that refusal to grant the injunction would render his appeal nugatory. Fifth, the court is to be guided by the principles in *Giella Vs Cassman Brown & Company Ltd* [1973] EA 358. Lastly, whenever disposing a plea for an interlocutory injunction, the court does not make definitive or conclusive pronouncements on the key issues in the dispute.
28. In the present application, the suit parcels were the subject matters of land adjudication under the [Land Adjudication Act](#). The Act provides elaborate mechanisms on adjudication and settlement of disputes relating to ownership of land in an adjudication section. From the evidence on record, the suit parcels were adjudicated in favour of the respondent. The appellant's objection to the adjudication register was rejected vide a binding decision rendered in 2013. The appellant was entitled to register an appeal to the Minister within 60 days. The appellant did not cause an appeal to the Minister to be registered within 60 days as stipulated in the statute. On expiry of the 60 days, the respondent was deemed to be the legitimate owner of the suit parcels.
29. After more than 7 years, the appellant filed a case in the Senior Principal Magistrate Court at Nkubu [Nkubu SPMC E & L Case No E055 of 2021] and invited the said court to decree the respondent to transfer to him the suit parcels. The appellant prosecuted his claim fully without raising the issue of jurisdiction. The respondent filed a defence and counterclaim which he, too, prosecuted fully. The trial court rendered a merit judgment which was against the appellant.
30. It does appear from the record in this appeal that Appeal No 141 of 2024 was registered in 2024 after the trial court rendered its judgment on 11/1/2024. This is the same appeal to the Minister which the appellant is waving as a basis upon which the trial court should have reviewed its judgment. The appeal had not been registered and did not exist during trial. It did not exist when judgment was rendered on 11/1/2024. At this point, given the above circumstances and without being conclusive or definitive, I do not think the appellant has demonstrated that he has an arguable appeal against the trial court's refusal to review its judgment.



31. For the above reasons, the finding of the court is that the application dated 7/8/2024 does not satisfy the criteria upon which a third-tier appellate court exercises jurisdiction to grant an interlocutory injunction in an appeal.
32. In light of the above findings, the application dated 7/8/2025 is rejected and dismissed for lack of merit.
33. The general principle in Kenya's civil legal system is that costs follow the event. No proper grounds have been demonstrated to warrant a departure from the above general principle. Consequently, the appellant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED AT MERU THIS 21ST DAY OF JANUARY, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**

