

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ELCA NO 73 OF 2023
(formerly Nyahururu ELCA No, E032 OF 2022)

KAMAU MBOGO MUCHEKE.....1ST

APPELLANT

MARY WANJIKU KAMAU.....2ND

APPELLANT

VERSUS

MICHAEL

MURAYA.....RESPONDENT

RULING

The Defendant’s Application dated 16/6/2025 for stay of execution against the Judgment delivered on 6/12/2022 in Nyahururu CMC ELC No. 226 of 2018 pending the hearing and determination of Nakuru Court of Appeal Civil Appeal No. E092 of 2025 or further Orders of this Court is based on the grounds both on the face of the Application and in the Affidavit of Kamau Mbogo Mucheke sworn on even date that:

- a. The Chief Magistrate’s Court in Nyahururu held that a portion of 2 Acres be excised from L.R NYANDARUA /OL’ARAGWAI /4897 and that the same be registered in the name of the Respondent.

- b. Having been aggrieved by the said Decree, the Applicants herein appealed to this Court but they were equally unsuccessful as the said Appeal was dismissed on 27/3/2025.
- c. The Applicants have now appealed to the Court of Appeal in Nakuru Civil Appeal No. E092 of 2025.
- d. The Applicants complied with the Chief Magistrate's Court, Nyahururu and deposited the Title Deed to the suit property in Nyahururu Chief Magistrate's Court and therefore the Respondent would not be prejudiced by the stay.
- e. Should this Application fail to be granted, the Applicants are likely to suffer irreparably and this may defeat the outcome of the Appeal should the same be in their favour since the substratum of the Appeal will have been disposed of.
- f. The chief Magistrate had granted the Respondent possession of the suit land which is still the status quo as of today.

In response/opposition to the Application, the Respondent Michael Muraya swore an Affidavit on 28/8/2025 wherein he depones that the Application by the Appellants is a delaying tactic meant to delay the conclusion of the Chief Magistrate's case and deny him the fruits of his otherwise successful Judgment. The dispute has been on for the last over 30 years and the same should be brought to a rest and that the Applicants have not demonstrated the substantial loss or prejudice they are likely to suffer if the stay of execution is not granted and the Chief Magistrate's Courts'

Decree is executed and that the Application should therefore be dismissed.

I have considered the Application and all the circumstances of the case. It is indeed consoling that the Title Deed of the suit land i.e. NYANDARUA/OL'ARAGWAI/4897 is still deposited in Nyahururu Chief Magistrate's Court and that the Respondent is in possession of the land in question and this status quo should prevail until the Appeal in Nakuru Court of Appeal Civil suit No. E092 of 2025 is heard and determined.

The fact that the Title Deed is held by the lower Court means that the substratum of the suit and/or Appeal will not change until the Court of Appeal decides and both parties will have their day in Court and the successful party will then have the suit land. The Application is therefore successful save that the costs of the same shall await the outcome of the Appeal in the Court of Appeal.

Ruling Read and Delivered in Nyandarua this 5th Day of February 2025.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Mr. Komu for the Plaintiff.

Ms. Mureithi for the Defendant.