



**Marriot Africa International Limited & another v Kangaita Coffee Estates Limited
& 10 others; Mbariu & 634 others (Intended Respondent) (Civil Application
E448 & E469 of 2025 (Consolidated)) [2026] KECA 204 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KECA 204 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E448 & E469 OF 2025 (CONSOLIDATED)
SG KAIRU, M NGUGI & AO MUCHELULE, JJA
FEBRUARY 6, 2026**

BETWEEN

MARRIOT AFRICA INTERNATIONAL LIMITED APPLICANT

AND

KANGAITA COFFEE ESTATES LIMITED 1ST RESPONDENT

TRENDSETTERS INVESTMENTS LIMITED 2ND RESPONDENT

UKOMBOZI HOLDINGS LIMITED 3RD RESPONDENT

CHIEF LAND REGISTRAR 4TH RESPONDENT

DIRECTOR OF SURVEY 5TH RESPONDENT

MARGARET NYAKINYUA MURIGU 6TH RESPONDENT

MARY WANJIKU KANYOTU 7TH RESPONDENT

WILLIE KIHARA NJOKI 8TH RESPONDENT

AND

**RICHARD MUTURA MBARIU & 634 OTHERS & 634
OTHERS INTENDED RESPONDENT**

**AS CONSOLIDATED WITH
CIVIL APPLICATION E469 OF 2025**

BETWEEN

UKOMBOZI HOLDINGS LIMITED APPLICANT

AND



MARGARET NYAKINYUA MURIGU	1 ST RESPONDENT
MARY WANJIKU KANYOTU	2 ND RESPONDENT
WILLY KIHARA	3 RD RESPONDENT
KANGAITA COFFEE ESTATES LIMITED	4 TH RESPONDENT
TRENDSSETTERS INVESTMENTS LIMITED	5 TH RESPONDENT
MARRIOT AFRICA INTERNATIONAL LIMITED	6 TH RESPONDENT
CHIEF LAND REGISTRAR	7 TH RESPONDENT
DIRECTOR OF SURVEY	8 TH RESPONDENT

(Being an application for joinder and stay of execution pending hearing and determination of an intended appeal against the Judgment and Decree of the Environment and Land Court of Kenya at Nairobi (Oguttu Mboya, J.) dated 10th July 2025 in ELC Civil Suit No. 4 of 2021)

RULING

1. The judgment that was delivered on 10th July 2025 at Nairobi by the learned Oguttu Mboya J. of the Environment and Land Court (ELC) aggrieved the applicant, Marriot Africa International Limited the 3rd respondent, Ukombozi Holdings Limited, Richard Mutura Mbariu and 634 others, who are the intended interested parties, and a host of other persons. In the present matter, the applicant filed a notice of appeal and with it, an application for stay of execution and injunction under Rule 5(2) (b) of the Court of Appeal Rules, 2022. The intended interested parties applied to be joined in the application, and to be granted stay of execution and leave to file a cross appeal. Their application was brought under sections 3A and 3B of the Appellate Jurisdiction Act and Rules 1(2), 5(2)(b), 31, 33, 44, 49 and 79 of the Court of Appeal Rules, 2022.
2. It is important to give a background as revealed by the record kept by the superior court. James Kanyotu died in 2008. H.C. Succession Cause No. 1239 of 2008 at Nairobi was filed with respect to his estate. Among the property that was named by the family as constituting the estate of the deceased was Kangaita Coffee Estates Limited, the 1st respondent. The deceased was a shareholder and director in the 1st respondent. The 1st respondent owned LR No. 11261/76 (IR 88741) Ruiru (the suit property) which comprised 506.5 acres of land. In 2012, while the succession proceedings were ongoing, the 2nd respondent bought the suit property at Kshs.700,000,000/= from “the directors of the 1st respondent, who included representatives of the late James Kanyotu’s family.” By agreement dated 5th February 2014, the 2nd respondent sold the suit property to the applicant for Kshs.750,000,000/= . The applicant subdivided the suit property and sold portions to the intended interested parties. The intended interested parties have each extensively developed their respective portions by building permanent homes, schools and other facilities.
3. Before the ELC, the applicant, by plaint dated 1st July 2019, sued Margaret Nyakinyua Murigi, the 6th respondent, Mary Wanjiku Kanyotu, the 7th respondent, Willie Kihara Njoki, the 8th respondent, and the 1st respondent, with the 3rd respondent as an interested party, seeking to permanently injunct them from laying claim to the suit property, or any part of it, or trespassing thereon, or evicting them or in any other way harassing them or interfering with the property or those occupying it; general damages for trespass; costs and interest.



4. The 7th and 8th respondents filed a defence to deny the claim, and with it filed a counterclaim claiming to be the owners of the suit property, and challenging the alleged sale of the property, and asserting that the sale and transfers were fraudulent and illegal. They sought to inhibit all the registrations; the cancellations of all titles issued; the demolition of the structures on the property; and eviction of the applicant and all those in occupation. The 8th respondent filed a defence to state that the suit property belonged to the 1st respondent, and denied the claim that the suit property was sold to the 2nd respondent, and stated that if the property was sold, the transaction was fraudulent, illegal and void.
5. The 1st respondent filed a defence and counterclaim. Its case was that the alleged sales to the 2nd respondent and then to the applicant were all fraudulent, null and void as they were done in the face of orders issued in the Succession Cause and registered against the title on 7th July 2010 and 23rd November 2010; and that the orders were in force stopping transactions on the title. The 1st respondent sought orders that the Chief Land Registrar, the 4th respondent, and the Director of Survey, the 5th respondent, do cancel all entries relating to the title and to revoke all the subdivisions and amendments effected on the title, and to restore the original records.
6. The ELC received the evidence of the parties, and came to the decision that, in the Succession Cause, there were orders issued on 28th September 2009, 25th October 2011 and 8th November 2013 stopping any sale, lease, charge, transfer or disposal of the suit property and inhibiting any transaction thereon, while the Cause was pending. Therefore, it was found, the sale to the 2nd respondent and by the 2nd respondent to the applicant, and the subsequent subdivisions and sale to the intended interested parties, were all fraudulent, illegal, null and void. The 4th respondent was directed to cancel or revoke all the entries to the title relating to all these transactions, the cancellations be gazetted, and the applicant and all the occupants of the suit property to vacate the suit property within 120 days, or be evicted. The suit by the applicant was dismissed. The counterclaim was allowed. The applicant was ordered to surrender all title documents within 90 days to enable the revocation and cancellation of the titles.
7. Following the judgment, the applicant filed a notice of appeal and the present application seeking to stay the execution of the decree, and to have the respondents enjoined pending its intended appeal to this Court. The applicant's case was that it was an innocent purchaser for value without notice; that it was not party to the succession proceedings and was therefore not aware of the orders in question; and that at the time of purchase, the title was not encumbered in any way. Through its advocate, learned counsel, Mr. Nyiha, it was submitted that it had an arguable appeal.
8. On whether the intended appeal would be rendered nugatory if it were to succeed in the absence of stay and injunction, learned counsel argued that the applicant had subdivided the suit property which it had sold to many people who had settled thereon and developed; the buyers had bought and developed their portions through bank loans and that execution before the hearing and determination of the appeal would substantially affect and disrupt these investments and livelihoods. To demonstrate the haste with which the respondents had moved to effect the orders, it was shown that, even before the 90 days, the 4th respondents had moved to place a caveat emptor notice in the Daily Nation, indicating it was beginning to cancel the titles and effect eviction and that, in fact, in utter contempt, the 4th respondent had cancelled the titles even before the main title documents had been surrendered as ordered.
9. On their part, the intended interested parties' case was that, having bought their parcels from the applicant without knowledge of the indicated happenings, their actions had been innocent and they had paid due value for their portions. Secondly, that, while it was known that they had occupied their respective portions, they had not been made parties to the dispute before the ELC, with the consequence that they had been condemned unheard.



10. These are the reasons why they stated that they had a good case which formed the basis for their seeking to be joined in the proceedings and to be allowed to file a cross-appeal. For the reasons that they had invested heavily in the suit property, they indicated that execution would render their intended appeal an academic exercise. Learned counsel, Mr. Otieno argued the application on their behalf.
11. Learned counsel Mr. Thuita for Ukombozi Holdings Limited, the applicant in Civil Application No. E469 of 2025 which was consolidated with the present application, supported the motion by the applicant, and similarly sought stay and injunction under Rule 5(2)(b) of this Court's Rules. It was stated that it was aggrieved by the decision because the counterclaim allowed in favour of the 1st respondent had been improperly filed and supported by a person who was a stranger to the company, who lacked any authority or board resolution, and was neither a director nor an official of the company; that it had raised these issues before the ELC which had failed to address them. Secondly, that the learned Judge had been informed that the suit property had been bought by various persons, and yet had not asked for their joinder before orders were issued against them. Like the applicant and the intended interested parties, Ukombozi Holdings Limited sought the orders referred to above as it waits for the appeal to be filed, heard and determined.
12. Learned counsel, Ms. Wangechi for the 1st respondent opposed the motion. She argued that it was not true that the parties seeking stay and injunction were innocent purchasers for value without notice as they were aware of the ongoing dispute over the suit property. It was submitted that the applicant was represented by the counsel who was involved in the Succession Cause; and that the agreement for the sale of the suit property was drafted by the advocates now representing the intended interested parties, and therefore there was knowledge of the outstanding dispute over the suit property. Learned counsel further submitted that the intended interested parties acted in bad faith, having purchased the plots from the suit property and developed the same in the face of the pending dispute. Learned counsel argued that execution had already occurred, including cancellation of titles, and that the suit property now vested in the 1st respondent. Counsel disputed claims that the 90-day period applied to the 4th respondent, submitting that it was for third parties to surrender those titles.
13. On whether the intended appeal will be rendered nugatory if stay is denied, it was argued that the 1st respondent had already taken possession and the appeal can proceed as the question of who held a valid title is determined.
14. Lastly, learned counsel submitted that since both the applicant and Ukombozi Holdings Limited claim ownership, this had created an equitable conflict; and that, now that the 1st respondent was both in possession and had been decreed to be the owner of the suit property, it cannot be said that any substantial loss could be suffered if the interim orders sought are not granted.
15. Learned counsel, Mr. Kamau, for the 4th and 5th respondents, while relying on the replying affidavits of Wilfred Muchai, Wanderi Mark Muigai and Robert Buba, opposed the application for stay and injunction. On the claim that his clients were in contempt, learned counsel submitted that the 4th respondent had merely registered the decree of the superior court at both the Central Land Registry and at Ruiru Lands Registry, and that the registration was consistent with the law. Secondly, that the issue of contempt of the orders of the superior court could not arise as there was no formal application filed against his clients for them to respond.
16. Mr. Theuri, Learned counsel for the 6th respondent, submitted that the intended appeal is not arguable; that a party who has a defective or illegal title cannot pass a valid title, and that there is no constitutional protection for property that has been acquired unlawfully. It was urged that the main ground of the proposed appeal concerns alleged conflict between the orders of the High Court and the Succession



Cause. Learned counsel argued that the encumbrance of the title from the Succession Cause had been lifted by the High Court and that the orders were procured and facilitated by the advocates involved in the relevant transactions, undermining claims of innocence. Regarding the nugatory aspect, learned counsel submitted that the orders sought by the applicants are ineffectual as substantial enforcement of the impugned orders had already occurred. He submitted that even if the appeal were to succeed, any necessary reversal of transactions can be achieved, so the appeal cannot be rendered nugatory. Learned counsel further argued that the third-party purchasers had full knowledge of the proceedings, which originated from a caveat emptor notice issued by the respondents, and therefore there was no basis for interim or temporary orders under Rule 5(2)(b) of the Rules.

17. Learned counsel for the 5th respondent argued that the intended appeal cannot be rendered nugatory because part of the decree has already been implemented, including reversion of some titles to the original owner; and that the 120 days execution period provided sufficient time for the appeal to be heard. Learned counsel further argued that half of the suit property had been unoccupied; and that the applicants had breached the superior court's injunction by attempting to occupy and fence off the land prematurely. As far as Ukombozi Holdings Limited was concerned, learned counsel submitted that it had declined to tender evidence in the superior court, and that, having sold the suit property to third parties, it was giving conflicting signals, as it were; and that it lacked an arguable appeal since it did not participate in the proceedings leading to the impugned judgment. We were urged not to grant any orders at this stage as the applicants merely seek to delay this matter rather than seeking to legitimately protect their interests. It was emphasised that the impugned orders can be reversed, if the intended appeal were to succeed.
18. We shall first deal with the request for joinder by Richard Mutura Mbariu and 634 others as interested parties. The Supreme Court has laid down the principles for joinder as an interested party in *Trusted Society of Human Rights Alliance -vs- Mumo Matemu & 5 Others*, SC Petition (Application) No. 12 of 2013 ([2014] eKLR) in which the Court stated as follows:-
 - “ 17. Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.
 18. Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his cause is to ensure that a legal and legitimate decision is achieved.”
19. Similarly, in the case of *Francis Karioko Muruatetu & another -vs- Republic & 5 others*, SC. Petition No. 15 as consolidated with S.C. Petition No. 16 of 2013 [2016], the Court set out the principles applicable in an application to be joined in proceedings by stating the following:-
 - “... One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:



- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”
20. From the facts of the dispute, it is clear that the intended interested parties each purchased a portion of the disputed property. The purchase was either from the applicant or the 3rd respondent. They have since become title holders following the purchase. Being title holders of the subdivisions, they have a stake and an interest in both the motion and in the appeal. They will be prejudiced by the decision of the Court in the motion and the appeal. They are entitled to be heard in the matters. Their contention is that they were bona fide purchasers for value without notice. We find merit in their application and consequently admit them as interested parties in the motion and in the appeal or intended appeal.
 21. Moving on to the question of stay of execution and injunction in respect of the impugned judgment, we recall that this is an application under Rule 5(2)(b) of the Court of Appeal Rules, 2022. The applicant has to demonstrate that the appeal or intended appeal is arguable, and that were the appeal or the intended appeal to eventually succeed, it would be rendered nugatory absent stay (see *Chris Munga N. Bichage -vs- Richard Nyagaka Tongi & 2 others* [2013] KECA 141 (KLR)).
 22. In assessing whether the appeal or intended appeal has arguable grounds, we appreciate that, as was held in *Stanley Kangethe Kinyanjui -vs- Tony Keter & 5 Others* [2013] KECA 378 (KLR), a single bona fide issue will satisfy the threshold. An arguable appeal is not one that guarantees a win but rather it is one that raises a genuine, non-frivolous legal issue requiring full ventilation at the hearing.
 23. Lastly, whether or not the appeal or intended appeal will be rendered nugatory depends on whether or not what is sought to be stayed, if allowed to happen, is reversible. If it is not reversible, whether or not damages will reasonably compensate the party aggrieved.
 24. The applicant, the 3rd respondent and the interested parties claim that they are innocent buyers for value without notice, and that on that basis, there is an arguable appeal or intended appeal. We are satisfied that they have met the threshold of arguability.
 25. The 1st respondent has a judgment issued in its favour, and through which it has been declared that it owns the suit property; that all titles issued subsequently be cancelled and or revoked; and that the present occupants of the property be evicted. The plea by the applicant, the 3rd respondent and the interested parties is that they are apprehensive of their titles being cancelled and their being evicted from the suit property before the appeal or intended appeal is heard and determined. They fear that their 1000 homes and other social and public amenities will be destroyed.
 26. It was clear to us that the 1st and 4th respondents are in a great hurry to execute the decree that followed the judgment, and that is why the 4th respondent could not wait for the 90 days given in the judgment for the surrender of the title documents before he went ahead and cancelled the title documents. We consider that, given the many families that have settled on the disputed property following the contested purchases, and given the social and public utilities that now exist on the property, a case of



the appeal or intended appeal being rendered nugatory if stay and injunction are not granted has been made. We allow the application contained in the motions dated 24th July 2025 and 28th July 2025 in terms that, until the appeal and/or intended appeal is heard and determined, the 1st and 4th respondents, or those acting under them, shall not evict the applicant, 3rd respondent and interested parties from the suit property, LR No. 11261/76 (IR 88741) or any of its subdivisions, or in any other way interfere with their peaceful occupation.

27. Costs shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2026

S. GATEMBU KAIRU, FCIArb, C.Arb.

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JUDGE OF APPEAL MUMBI NGUGI

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

