



REPUBLIC OF KENYA



**Ramadhani & 2 others v Abud & 2 others (Civil Appeal (Application)
E443 of 2025) [2026] KECA 229 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KECA 229 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E443 OF 2025
SG KAIRU, M NGUGI & P NYAMWEYA, JJA
FEBRUARY 13, 2026**

BETWEEN

**MAIMUNA JUMA RAMADHANI 1ST APPLICANT
RAMADHANI JUMA RAMADHANI 2ND APPLICANT
JEFFER KIIRU KERE 3RD APPLICANT**

AND

**HAJI ABUD 1ST RESPONDENT
ABUD JUMA WAZIRI 2ND RESPONDENT
FATIHIYA JUMA WAZIRI 3RD RESPONDENT**

(Being an application on intended appeal from the Ruling of the High Court of Kenya at Nairobi (H. Namisi, J.) dated 19th May 2025 in HC. Succ. Cause No. E134 of 2023)

RULING

1. There is pending before the Court, the above cited appeal, namely, Civil Appeal No. E443 of 2025, within which the present application dated 16th June 2025 is made. In the application, the applicants, Maimuna Juma Ramadhani, Ramadhani Juma Ramadhani and Jeffer Kiiru Kere who are also the appellants, seek orders against the respondents, Haji Abud, Abud Juma Waziri and Fatihya Juma Waziri, to stay orders given by the High Court at Nairobi on 19th of May 2025 in Succession Cause No. 134 of 2023 in respect of the estate of Mariam Ali Chepkoech, deceased.
2. At the core of the dispute is a property known as LR Number 209/2111 (IR 228456) Nairobi (also known as Title Number Nairobi Block 40/399) (the property). The property is also the subject of Succession Cause No. 420 of 2001 and ELC Case No. 447 of 2024. Based on a Certificate of Title exhibited to the supporting affidavit, the property was registered in the names of Said Abud



- Maalim, Halima Abud Maalim, Haji Abud and Mariam Ali Chepkoech as proprietors as lessees. Those proprietors, except Haji Abud, it would appear, are deceased and their estates are the subject of succession causes.
3. The applicants are the administrators of the estate of Mariam Ali Chepkoech pursuant to a grant of representation made on 9th May 2023 and confirmed on 19th June 2024, while the respondents are the administrators of the estate of Fatima Ali Salimi successor to Halima Abud Maalim.
 4. By an application dated 17th February 2025, presented to the High Court in Succession Cause No. 134 of 2023, the respondents applied for revocation or annulment of the grant issued to the applicants on grounds that they had obtained the grant by misleading the court that the property was registered in the name of Mariam Ali Chepkoech, and that they were therefore illegally collecting rent.
 5. The application dated 17th February 2025 was mentioned before the learned Judge of the High Court on 19th May 2025 for purposes of directions when an order, the subject of the appeal, was made restraining the applicants by an order of injunction “from administering forceful occupation, selling, transferring, alienating or collecting and receiving rent over property known as L.R. No. 209/2111.”
 6. In their memorandum of appeal, the applicants complaint that the Judge erred in “issuing final substantive orders at an interlocutory stage, thereby making the entire case superfluous”; that the applicant’s right to fair hearing was violated; that the Judge failed to preserve the property, the subject matter of the suit; and that the Judge misapprehended the facts and background of the dispute.
 7. Learned counsel for the applicants, Mr. Olendi, relying on the grounds on the face of the application, the supporting and further affidavit and written submissions, urged that the appeal is arguable and that the appeal will be rendered nugatory if the orders sought are not granted. The decision of the Court in *Gulf Timber & Hardware Supplies Limited vs. Ngaruiya & 5 Others*, Civil Appeal No. E203 of 2021 was cited.
 8. Although there was no appearance for the respondents during the hearing of the application despite notice of hearing having been served, Abud Juma Waziri in his replying affidavit deponed that the impugned orders made on 19th May 2025 do not prejudice the applicants; that counsel for all the parties were present when the orders were made; that in any event the applicants have defied that order and have continued being illegally in occupation and collecting rent from the property contrary to the court order; and that the 1st applicant is in any case not related to Mariam Ali Chepkoech, deceased.
 9. In submissions dated 27th October 2025, Ms. Ombati of Otieno & Opondo Advocates for the respondents cited the case of *Hadkinson vs. Hadkinson* [1952] 2 All ER 567 for the proposition that all persons have unqualified obligation to obey court orders. It was submitted that the applicants should not have audience with the Court as they have violated and are in contempt of the orders issued on 19th May 2025; that those orders did not violate the applicant’s right to be heard as they claim; and that the Judge rightly issued preservation orders to prevent the illegal occupation and rent collection, the mischief perpetrated by the applicants.
 10. We have considered the application against the legal principles applicable. (See *Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 Others* [2013] KECA 378 (KLR)). The applicants are required to demonstrate that the appeal is arguable. In that regard their complaints, already stated, include the grievance that final orders on the application before the Judge were given before the parties had been heard and that their right to fair hearing was violated. Considering the complaints as set out in the memorandum of appeal, we do not think that the appeal is frivolous. It is arguable.



11. On the nugatory aspect, there is evidently serious controversy regarding the property which the applicants claim has been fraudulently transferred by the respondents to third parties without regard to the applicants' interests as beneficiaries of the estate of Mariam Ali Chepkoech, who, they assert, are in occupation of the property and entitled to collect and receive rent. We are satisfied that unless we grant the orders sought, and the appeal ultimately succeeds, it will be rendered nugatory.
12. Consequently, the application dated 16th June 2025 is allowed. We order that pending the hearing and determination of the appeal, the order of injunction given by the High Court at Nairobi on 19th May 2025 in Nairobi High Court Succession Cause No. E134 of 2023 restraining the applicants from occupying or collecting or receiving rent over the property known as LR No. 209/2111 is hereby stayed.
13. Costs of the application shall be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 13TH 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

P. NYAMWEYA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

