

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELC NO E020 OF 2024

WANGUI JOHN KIMUHU.....PLAINTIFF

VERSUS

GEORGE KOIMBURI KIMUHU & 15 OTHERS.....DEFENDANTS

RULING:

The Plaintiff has moved this Court in an Application dated 5/12/2025 under Certificate of Urgency for orders that: -

1. This Court do stay the Hearing of this suit until the Court of Appeal determines Civil Appeal No. E216 OF 2025.
2. The Court do find that the Court's Decision in Nyandarua ELC Appeal No E005 of 2025 emanating from Engineer Chief Magistrate's ELC case No. E004 OF 2023 directly touches on the determination sought in this case.
3. Costs of this Application.

In the grounds in support of this Application the Applicant, Wangui John Kimuhu , says that she was the Defendant in Engineer Chief Magistrate's ELC case No. E004 of 2023 which was determined by the Honourable Mr. Barasa on 2/9/2024 what was overturned by this Court on 13/11/2025 in ELC Appeal No. E005 OF 2025 where the Court found that the late John Kagai Gachenga had rightfully subdivided the parcel of land L.R No NYANDARUA/NJABINI/267 and Titles issued during his lifetime. As a consequence, thereto, the Applicant

appealed to the Court of Appeal and since the 2 cases are similar in that the current case touches on Titles issued after the sub-division of NYANDARUA/NJABINI/267 and this Court has pronounced itself on the said Titles and the subsequent sub-divisions and therefore it would be unjust to hear the current suit until the Appeal on the earlier suit has been heard and determined.

The Applicant further says that if this Application is allowed, no prejudice would be occasioned to the Defendants herein. In the Affidavit in support of the Application sworn on 5/12/2025 by Nancy W. Njoroge, Advocate for the Applicant, it is deponed that the Applicant's case seeks the cancellation of various parcels of land out of the sub-division of the aforesaid suit land which had been ordered cancelled by the Chief Magistrate's Court, Engineer, and the said Judgment executed but this Court held that the sub-divisions were lawful.

In the Replying Affidavit sworn on 15/12/2025 in opposition to the Applicant, the 13th Defendant depones that the Application does not meet the conditions required for stay of proceedings for the 2 suits are not similar because he was not a party in the earlier suit and the Appeal thereafter, there is a counter-claim and a consent in Nakuru Civil suit No. 232 of 2012.

He also says that the matter herein ought to be a subject of a succession cause and that the staying of the proceedings herein would be unjust since it would delay his enjoyment of the fruits of the Court Order after the Consent was recorded.

On behalf of the 1st, 2nd, 6th, 7th, 8th, 10th, 11th and 12th Defendants, the 10th Defendant Michael Kariuki Gachunga swore an Affidavit on 11/12/2025 in which he depones that the Application does not meet the threshold required for stay of proceedings and that the Plaintiff is blowing hot and cold at the same time over the sub-division and distribution of land parcel No. NYANDARUA/NJABINI/267.

He states that if this suit is similar to Nyandarua ELC Civil Appeal No. E005 of 2025 which emanated from Engineer Chief Magistrate's Court No. ELC E004 of 2023, then the Plaintiff ought not to have raised a counter-claim before the trial Court when the Decision prompted the Appeal and that the Plaintiff never raised the issue of the pendency of this suit in the other 2 suits.

He also depones that this suit is incompetent in view of the other suit i.e. Nakuru Civil Suit No. 232 of 2012 (O.S) where a Consent was recorded and that this suit ought to be dismissed as prayed for in the Respondents Application dated 2/12/2025. He is of the opinion that this Court has no jurisdiction to hear this case since the family Court at Engineer Chief Magistrate is seized of the same.

Having given all the parties the opportunity to be heard in this Application and bearing in mind that I have already pronounced myself in a similar case, which has been appealed against in the Court of Appeal at Nakuru in Civil Appeal No. E216 OF 2025, I am conscious that the outcome of the Appeal would definitely have serious impact and consequences on the current suit, either positively or negatively. Should the case in the Court of Appeal succeed then chances are that this case may also succeed and

should that happen, then there would follow another Appeal with most probably the same results. It would therefore not be wise to waste judicial time in such a manner and I therefore order that the proceedings in this case be stayed awaiting the outcome of Court of Appeal at Nakuru Civil Appeal No. E216 of 2025. However, since the suit herein has a co-relation with Nyandarua ELC Appeal No E005 of 2025, the stay of proceedings granted herein should not deny the Respondents any gains they may have attained from Nyandarua ELC. Appeal No E005 of 2025 unless there is a stay in respect to the latter. Neither should it be taken to have conferred any rights or denied any party any right in any property whatsoever save the existing ones at the time of this Ruling.

The costs of this Application shall await the outcome of the Appeal in the Court of Appeal. We shall mention this case later in the year on the 9/12/2026 by which time we shall be able to confirm whether the said Appeal has been concluded but if concluded earlier, any party is at liberty to move the Court.

Ruling dated and delivered at Nyandarua this 19th Day of February, 2026.

HON MUGO KAMAU
JUDGE

In the presence of:

Court Assistant - Samson.

For the Plaintiff N/A.

For the Defendants Mr. Masore