



Mugambi (Suing as the legal representative of M'Rimberia -Deceased) v Nyerere (Sued as legal representative of the Estate of M'Rimberia M'Tuerandu- Deceased) & 2 others (Land Case Appeal E091 of 2025) [2026] KEELC 840 (KLR) (18 February 2026) (Ruling)

Neutral citation: [2026] KEELC 840 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
LAND CASE APPEAL E091 OF 2025
BM EBOSO, J
FEBRUARY 18, 2026**

BETWEEN

DAVID MUGAMBI (SUING AS THE LEGAL REPRESENTATIVE OF M'RIMBERIA -DECEASED) APPELLANT

AND

JULIUS NYERERE (SUED AS LEGAL REPRESENTATIVE OF THE ESTATE OF M'RIMBERIA M'TUERANDU- DECEASED) 1ST RESPONDENT

KITHINJI M'TUERANDU 2ND RESPONDENT

JUSTUS KATHURIMA KIMANTHI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF STEPHEN KIMATHI M'TUERANDU- DECEASED) 3RD RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 3/12/2025, through which the estate of the late M'Mugambi M'Rimberia (the applicant) seeks an order staying execution of the judgment dated 12/11/2025 and all the consequential orders in Meru CMC E & L Case No 59 of 2014, pending the hearing and determination of this appeal. The key question to be determined in the ruling is 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.
2. The application was premised on the grounds outlined in the motion and in the two affidavits of the applicant, dated 3/12/2025 and 20/1/2026 respectively. It was canvassed through written submissions dated 22/1/2026, filed by M/s Maitai Rimita & Co Advocates. In summary, the case of the applicant is that, the trial court delivered the impugned judgment on 12/11/2025. The applicant estate was dissatisfied with the judgment and lodged this appeal. It contends that unless a stay order is granted,



- the respondents will take steps to execute the decree. They state that the subject matter of the decree is land, which is likely to be subdivided and transferred, thereby causing irreversible prejudice to the estate. They add that execution of the decree will render the pending appeal nugatory as the subject matter of the appeal will be lost.
3. The estate states that it has good grounds of appeal with high chances of success. It further states that it is willing to comply with any reasonable conditions the court may impose when issuing the order of stay of execution.
 4. The respondents opposed the application through a replying affidavit sworn on 17/12/2025 by Kithinji M’Tuerandu [the 2nd respondent] and written submissions dated 16/1/2026, filed by M/s Kiogora Arithi & Associates Advocates. The case of the respondents is that the subject matter of the appeal is family/ancestral land that belonged to their late father, Mutuerandu M’Bagine but their brother, the late M’Mugambi M’Rimberia, secretly filed a succession cause and caused the entire land to be registered in his name.
 5. The respondents state that David Mugambi [the personal representative of the late M’Mugambi M’Rimberia] does not reside on the suit land, adding that together with his siblings, they reside on Kiirua/Ruiri/606, situated about 2 kilometres from the suit land. They further state that their families reside and farm on a portion of the suit land while David Mugambi and his brother, Kinoti Mugambi, cultivate and utilize their late father’s portion of the suit land. They contest the allegation that the appellant estate stands to suffer loss, damage and harm, because they do not reside on the suit land.
 6. The respondents add that the applicant estate admitted at paragraph 6 of the supporting affidavit that the suit land is ancestral land. It is their case that they have no intention of taking the appellant’s portion of the suit land.
 7. The court has considered the application, the response to the application, and the parties’ respective submissions. As pointed out in the opening paragraph of this ruling, the key issue to be determined in the ruling is whether the application under consideration meets the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal before this court.
 8. The relevant criteria has been legislated under 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.”
 9. The impugned judgment was rendered on 12/11/2025. The appeal herein was lodged on 3/12/2025. The application under consideration was filed on 3/12/2025. A period of 22 days (from the date of the impugned judgment) lapsed before the application was lodged. The court finds that there was no inordinate delay in bringing the application.
 10. On substantial loss, the estate of the late M’Mugambi M’Rimberia [the applicant] contends that unless an order of stay of execution is issued, the suit land will be interfered with and will be subdivided, transferred or alienated, thereby causing irreversible prejudice to it. The court has considered the above contention. The disposal orders in the judgment of the lower court read as follows:



- a. A declaration to issue that L.R Kiiroa/Ruiri/528 is ancestral/family land held by the defendant in trust of the family of the late M'Rimberia M'Tuerandu -deceased).
 - b. An order to issue that the defendant's registration in L.R Kiiroi/Ruiri/528 and acquisition of the same was fraudulent and/or illegal. The Land Registrar is directed to cancel the registration.
 - c. The family of the late M'Rimberia M'Tuerandu to agree on a mode of distribution.
 - d. The defendant shall bear the costs of the suit
11. It is clear from the above disposal orders of the trial court that nothing irreversibly prejudicial will happen to the suit land without the mutual agreement of the parties or without a court order from a relevant and competent court. The contention that the suit land will be subdivided, transferred and alienated is far-fetched and is not informed by the decree of the trial court. There is nothing to suggest that the subject matter of the appeal will be lost or disposed. It will remain in the name of the late Mutuerandu M'Bagine. Secondly, the applicant estate has not contested the allegation that it has all along been in possession of the late M'Mugambi M'Rimberia's portion of the suit land while the respondents have been on their respective portions of the suit land. Given the nature of the impugned decree and the above evidence, I do not think the applicants have demonstrated a case of any likely substantial loss.
 12. On security for the due performance of the decree, the applicant estate stated that it was ready and willing to comply with any reasonable conditions the court may impose but did not offer any evidence-based proposal. The party seeking an order of stay of execution has an obligation to give evidence-based proposals on security. When none is given by the party, it cannot be said that the party has offered security. That is the scenario here.
 13. In light of the foregoing, the court finds that the application dated 3/12/2025 has failed to satisfy 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. Consequently, the application is rejected and dismissed for lack of merit.
 14. In tandem with the general principle in Section 27 of the [Civil Procedure Act](#), the applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF FEBRUARY, 2026.

B M EBOSO

ELC JUDGE

