

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA**

**ELCA NO E016 OF 2025**

**PAUL GITONGA THATHI.....APPELLANT**

**VERSUS**

**VIRGINIA WANGUI NDUTA.....1<sup>ST</sup>**

**RESPONDENT**

**JULIA WAMBUI NJIHIA.....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

Before me is an Application by the “Intended Appellant” for a Stay of Execution of the Judgment herein pending Hearing and determination of the Appeal lodged. The Application is dated 12/8/2025. In the Appeal, the so-called Intended Appellant is dissatisfied with the Judgment which was delivered by the Honourable Harrison Adika Musa Sajide on 8/7/2025 in Engineer SPMC ELC Case No. E009 of 2023. The same is supported by the grounds on the face of the said Application and the Affidavit in support thereof of the Intended Appellant, Paul Thathi Gitonga in which it is stated and deponed that the Respondents may proclaim the Appellant’s property, viz. “ the plot measuring 50 by 100 feet NYANDARUA/NANDARAZI/580” seeking to enforce the Judgment unless a Stay of Execution is granted pending Hearing and determination of this Application. It is also urged that it is

against natural justice to condemn one unheard and particularly if the mistakes are beyond one's control. And that he would suffer irreparable damage and the Appeal would be rendered nugatory while the Appeal has overwhelming chances of success.

He further depones that the Respondents have already set in motion the process to enforce execution of the Judgment which is a bid to recover from the Applicant "unconscionable amount of Rent" which will cause him substantial loss.

In their response via a Replying Affidavit by the 1<sup>st</sup> Respondent, Virginia Wanjau Nduta, the Respondents urge that the Applicant's Application is frivolous, vexatious, and an abuse of the Court process, brought only to delay the enjoyment of the fruits of lawful Judgment. She further depones that although an Application had been preferred to substitute her in place of Margaret Nduta Njihia in the lower Court, that Application was never presented nor attended to. She finally said that the Appeal has no chances of success.

This Court is at this stage not interested in the merit or otherwise and/or probability or otherwise of the success of the Appeal since doing so could be to determine, however remotely, the success of the Appeal, and I would therefore not delve into the same or try to swim in such waters whether deep or shallow.

My main concern is whether if the stay is not granted, the Appeal, if successful would be rendered nugatory. In other words, the question to be decided would be the preservation of the subject

matter for the ultimate winner after the determination of the Appeal so that the same is there for his/her to take home.

I must say from the outset that there are some glaring inconsistencies in the Application, such as the Applicant talking about “intended Appeal” when there is already an Appeal No. E016 of 2025 on record in this Court or giving this Court the impression that there were issues of natural justice not observed, which is not the case.

The Applicant claims that the issue is that of collection of rent from the suit premises and should this be the case, then executing a Monetary Decree should not pose any fear that he would suffer irreparable harm incapable of being compensated in Damages. Whatever rent that shall have been collected by the Respondent shall be refunded and the Applicant has not shown to the Court that the Respondents are unable to refund what they will have collected should the Appeal turn out against them. The Demand Letter referred to dated 10/7/2025 talks of the Applicant being asked to stay collecting rent from the subject land. I think the same is in order and the Application dated 12/8/2025 is disallowed with costs.

**RULING DATED AND DELIVERED AT NYANDARUA THIS 18TH DAY OF FEBRUARY, 2026.**

**HON MUGO KAMAU**

# **JUDGE**

In the presence of:

Court Assistant - Samson.

For the Plaintiff.....Ms. Wachuka Karuri.

For the Defendant.....