

**IN THE COURT OF
APPEAL AT MOMBASA**

CORAM: MURGOR, NGENYE & JOEL NGUGI,

JJ.A.) CIVIL APPLICATION NO. E043 OF 2025

BETWEEN

INUKA AFRIKA PROPERTIES LIMITED.....APPLICANT

AND

LAWRENCE CHARO KARISA 1ST

RESPONDENT JUMA PAMBA JUMA.....2ND

RESPONDENT

OMAR PUMBA JUMA 3RD

RESPONDENT REGISTRAR OF LANDS KILIFI

4TH RESPONDENT

*(An application for injunction and stay of execution of the
Judgement/Decree of the Environment and Land Court of Kenya at
Malindi (the ELC) (Makori, J.) delivered on 2nd April 2025)*

in

Malindi ELCC No. E038 OF 2023)

RULING OF THE COURT

1. The genesis of the proceedings before us is the Judgement and Decree (***Makori, J.***) in Malindi ELC Case No. E038 of 2023 dated and delivered on 2nd April 2025. The dispute between ***Inuka Africa Properties Limited (the applicant)*** and ***Lawrence Charo Karisa & 3 Others (the respondents)*** emanated from the disputed

ownership of the suit property known as **Parcel No. Kilifi/Roka/308.**

2. One of the prominent issues which the trial court considered was the authenticity of an alleged judgement delivered by the late **Mukunya, J.** on 11th February 2014 in ELC Case No. 39 of 1996, in which the learned Judge purportedly declared **Juma Pamba Juma** and **Omar Pamba Juma (the 1st and 2nd respondents)** as the owners of the suit property, which in turn was sold and transferred to the applicant. In the end, Makori, J. found in favour of the 1st respondent by issuing, among others, orders that; the suit property's title be cancelled and reverted to its original status prior to registration of the transfer on 12th November 2020 to the applicant; eviction orders do issue against the applicant directing it to vacate the suit property within 90 days of the judgement; the 1st respondent be awarded general damages of Kshs.5,000,000; and that costs and interest be awarded to the 1st respondent.
3. Aggrieved, the applicant filed before this Court an appeal, being Civil Appeal No. E093 of 2025. Meanwhile, it has now approached the Court by way of a Notice of Motion dated 29th May 2025 brought under **Rules 5(2) (b)** and **49(1)** of this **Court's Rules** seeking that:
- a) The respondents be restrained, whether by themselves, their employees, their servants, associates, agents and/or persons working on their behalf from fencing, subdividing, selling, offering for sale, leasing or offering to lease, transferring or purporting to transfer, developing, or otherwise having any adverse dealings with the**

parcel of land known as Kilifi/Roka/308 pending the determination of the applicant's appeal.

b) There be a stay of execution of the judgement delivered by Makori, J. on 2nd April 2025 in Malindi ELC Case No. E038 of 2023 pending determination of the applicant's appeal.

c) Costs of the application be in the cause.

4. The Motion is supported by the affidavit of Josphat Muchere Marete, one of the applicant's directors sworn on 29th May 2025. Mr. Marete deposes that the impugned decision ordered eviction of the applicant from the suit property, and that, it surrenders vacant possession to the respondents as its legal and/or beneficial owners; and that, unless the respondents are restrained from dealing with the suit property in any manner, the recovery of the suit property and/or compensation process will expose the applicant to irreparable loss.
5. Mr. Marete urges that the appeal is arguable based on the nine (9) grounds of appeal enumerated in the draft Memorandum of Appeal dated 21st May 2025 annexed to the supporting affidavit. It was further urged that the appeal will be rendered nugatory as the same will have been overtaken by events and reduced to a mere academic exercise if stay is not granted, hence the need to preserve the subject matter of the appeal by issuance of stay orders.

6. At the hearing of the application on 2nd July 2025, learned counsel Ms. Kinuva was present for the applicant. There was no appearance for Ms. Wameyo Onyango & Associates, counsel for the 1st respondent and the 2nd, 3rd and 4th respondents despite proper service with a hearing notice. Ms. Kinuva fully relied on her written submissions dated 25th June 2025 which were filed contemporaneously with the case digest.
7. The applicant cited the decision of **Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others (2013) KECA 378 (KLR)** for the requirements which an applicant in an application for stay of execution should satisfy the Court with under **Rule 5(2) (b)** of this **Court's Rules**. It argued that, premised on the draft Memorandum of Appeal annexed to the supporting affidavit, the appeal was arguable; and that, if the order of stay is not granted, the appeal was likely to be rendered nugatory since the applicant is facing imminent threat of eviction from the suit property.
8. As for the prayer of injunction, the applicant went on to discuss the principles of injunction as outlined in the *locus classicus* case of **Giella vs. Cassman Brown & Co. Limited (1973) E.A. 358**. We pose here to state that the principles under **Giella Cassman Brown case**, are not applicable before this Court. All that an applicant is required to satisfy are the principles underpinned under Rule 5(2)(b), which we which we shall revert to shortly.

9. We have considered the Motion, the affidavit in support thereof, the applicant's submissions, the cited authorities and the law. The only issue that falls for determination is whether the applicant has met the threshold for grant of the orders sought. It is trite law that the applicable principles in an application for stay of proceedings, stay of execution or injunction are governed by **Rule 5(2)(b)** of this **Court's Rules**. They are: firstly, an applicant has to satisfy that he/she has an arguable appeal. However, this is not to say that it must be an appeal that will necessarily succeed; it suffices that it is an appeal that is not frivolous. Even a single *bona fide* ground will suffice. See **Joseph Gitahi Gachau & Another vs. Pioneer Holdings (A) Ltd & 2 others (2008) KECA 201 (KLR)** and **See Household & Body Care (K) Ltd, Civil Application No Nai 345 of 2004 (unreported)**.
10. Secondly, an applicant has to demonstrate that unless an order of stay is granted, the appeal or intended appeal would be rendered nugatory. See **Stanley Kinyanjui (supra)** and **Githunguri vs. Jimba Credit Corporation Ltd. (No. 2) (1988) KLR 838**.
11. We have appraised ourselves with the proposed grounds of appeal contained in the draft Memorandum of Appeal dated 21st May 2025. The applicant raises among other grounds that the learned Judge erred in law and in fact: *in finding that the applicant was not a bona fide purchaser for value without*

notice of the suit property; by failing to appreciate that the applicant was protected under the law of equity since the doctrine of innocent purchaser for value without notice of fraud was applicable in the circumstances; and by failing to appreciate that the applicant had a valid sale agreement, and that a consent to transfer the suit property from the land control board had been obtained. We find that these are sufficient arguable grounds to warrant a hearing before a full bench of this Court.

12. As for the second limb, as to whether the appeal will be rendered nugatory if stay of execution and/or injunctive orders are not granted, it is our view that, if the judgment and decree of the trial court is executed, the applicant will ultimately be evicted from the suit property, thereby rendering the hearing of the appeal a mere academic exercise. Indeed, we are cognizant that the aftermath of the impugned decision of the trial court was that the subject suit property would fundamentally change ownership. In such circumstances, and in the interest of all parties, it would be prudent to preserve the *status quo* of the suit property. Thereafter, the competing interests of the parties can be determined in a full hearing of the appeal.
13. In view of our observation above, we arrive at the inescapable conclusion that the Motion is merited, and we hereby order that:

a) There be stay of the execution of the Judgement and Decree (Makori, J.) dated and

delivered on 2nd

**April 2025 in Malindi ELCC NO. E038 of 2023
pending determination of the appeal.**

b) The respondents be and are hereby restrained whether by themselves, their employees, their servants, associates, agents and/or persons working on their behalf from fencing, subdividing, selling, offering for sale, leasing or offering to lease, transferring or purporting to transfer, developing, or otherwise having any adverse dealings with the parcel of land known as Kilifi/Roka/308 pending the determination of the applicant's appeal.

c) Cost of the application shall be in the appeal.

Dated and delivered at Malindi this 20th day of February, 2026.

A. K. MURGOR

.....
JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....
JUDGE OF APPEAL

JOEL NGUGI

.....
JUDGE OF APPEAL

*I certify that this is the
true copy of the
original*

Signed

DEPUTY

REGISTRAR