



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC APPEAL NO E031 OF 2025**

**JOHN KINGARU GICHIRI.....**  
**APPELLANT**

**VERSUS**

**MUIRIGO HOUSING DEVELOPMENT LTD.....1<sup>ST</sup>**  
**RESPONDENT**

**CHIEF LAND REGISTRAR.....2<sup>ND</sup>**  
**RESPONDENT**

**FURNCORN LIMITED.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

1. By an amended Notice of Motion dated 10<sup>th</sup> February 2025, brought under Order 40, Order 42 Rule 6(1), Order 51 Rule 1 of the Civil Procedure Rules and Article 50 of the Constitution, the Applicant seeks the following orders:

**1) Spent.**

**2) Spent**

**3) THAT pending the hearing and determination of the Appeal, this court be pleased to grant an order to restrain the Respondents their servants, agents, buyers, allottees or any other person acting on their own behalf or on behalf of the Respondents from howsoever trespassing, entering, encroaching, remaining in, subdividing, surveying, taking over, beaconing, dispossessing, alienating, reclaiming, fencing, removing any fence, gate or padlocks, demolishing any structures, dumping making any constructions and or harassing the Appellant or interfering with his peaceful entitlement, commercial exploitation and possession of Plot No. 53A within L.R. No. 8789/1 situate in Kasarani Nairobi.**

**4) THAT this Honourable Court be pleased to issue any further orders as it deems fit and just pending hearing and determination of the appeal.**

2. The application is based on the grounds appearing on its face together with the supporting affidavit of John Kingaru Gichiri, sworn on even date.

### **THE APPLICANTS' CASE**

3. The Applicant averred that he filed an appeal against the judgment in Milimani MCELC E062 of 2023, which was likely to succeed. He also claimed that the Respondents had already commenced the eviction process pursuant to the judgment, even though no eviction orders had been issued.
4. The Applicant is apprehensive that he would suffer irreparable harm if the orders sought are not granted.
5. Though duly served, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not file any response to the application.

### **THE 3<sup>RD</sup> RESPONDENT'S CASE**

6. The 3<sup>rd</sup> Respondent filed a replying affidavit sworn by Solomon Njoroge Kiore on 1<sup>st</sup> February 2025 in opposition to the application.
7. The deponent averred that the trial court found that the Appellant's claim to the suit property had previously been litigated in Nairobi Civil Case No. 1264 of 2005. On that basis, the Plaintiff's suit was struck out with costs for being an abuse of the Court's process.
8. He argued that the orders sought by the Appellant in Civil Case No. 1264 of 2005 are identical to those sought in the proceedings before the lower court and in this appeal. He contended that the Appellant is relitigating matters already determined, thereby abusing the court's process. He further argued that the application is misconceived and an abuse of the court's process, and that it should be dismissed with costs.

9. He maintained that the Appellant has no title or legal entitlement to the suit property.
10. The application was canvassed by way of written submissions.

### **THE APPELLANT/APPLICANT'S SUBMISSIONS**

11. The Applicant filed his submissions dated 26<sup>th</sup> April 2025.
12. On behalf of the Appellant, Counsel submitted that the sole issue for determination is whether the Respondents should be restrained from interfering with the Appellant's occupation of the suit property. Counsel further submitted that unless the orders sought are granted, the Appellant would suffer irreparable loss, as the 1<sup>st</sup> Respondent had commenced execution of the decree. To support this point, Counsel relied on the cases of **Tropical Supplies Ltd & others v International Credit Bank Ltd (in liquidation) (2004) EA and James Wangalwa & another v Agnes Nliaka Cheseto (2012) eKLR.**
13. Counsel submitted that the appeal would be rendered nugatory if the orders sought are not granted. Counsel relied on the case of **Patricia Njeri & 3 others vs National Museum of Kenya (2004) eKLR** to address the principles governing the grant of a temporary injunction pending the hearing and determination of the appeal. Counsel further submitted that the Respondents had begun evicting the tenants residing on the suit property.

14. It was further submitted that the application was filed timeously.
15. In conclusion, Counsel urged the court to grant a stay of execution to preserve the substratum of the appeal. To support this point, reliance was placed on the case of **Rintco Africa Ltd & another vs Munanji & another (2023) eKLR.**

### **THE 3<sup>RD</sup> RESPONDENT'S SUBMISSIONS**

16. The Respondent filed its submissions dated 17<sup>th</sup> July 2025.
17. On its behalf, Counsel relied on the contents of the replying affidavit to support his submissions.

### **ANALYSIS AND DETERMINATION**

18. Having considered the application, the respective affidavits, and the rival submissions, the issue determination is whether the Applicant has met the threshold for the grant of an injunction pending the hearing and determination of the appeal.
19. The Applicant seeks a temporary injunction pending the hearing and determination of the Appeal. Order 42 Rule 6(6) of the Civil Procedure Rules provides as follows;

***“Notwithstanding anything contained in sub-rule (1) of this rule, the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just, provided the procedure for instituting***

***an appeal from a subordinate court or tribunal has been complied with.”***

20. The principles governing the grant of a temporary injunction pending appeal were set out in **Patricia Njeri & 3 Others vs National Museum of Kenya [2004] eKLR**, as follows:

***a. “An order of injunction pending appeal is a discretionary order which will be exercised against an applicant whose appeal is frivolous.***

***b. The discretion should be refused where it would inflict great hardship than it would avoid.***

***c. The applicant must show that to refuse the injunction would render the appeal nugatory.***

***d. The court should also be guided by the principles in Giella vs. Cassman Brown [1973] EA 358.”***

21. In the matter at hand, the Applicant argued that he has an arguable appeal that would be rendered nugatory if an injunction is not granted. He asserted that he is in possession of the suit property and that he would suffer irreparable harm that cannot be compensated by damages if he is evicted from the suit property.

22. The 3<sup>rd</sup> Respondent contends that the dispute over the suit property was conclusively determined in ELC No. 1264 of 2005, and that no appeal was filed. It is not in dispute that the Appellant’s claim for the suit property had previously been determined against him. That judgment remains valid

and has not been set aside. The suit before the lower court sought substantially similar reliefs, was struck out on the basis of that earlier determination, and is the subject of this appeal.

23. An injunction is an equitable remedy granted when an Applicant demonstrates a legal or equitable right that requires protection. Granting the injunction would, in effect, allow the Applicant to continue occupying the suit property whose ownership has already been determined, thereby suspending the legal consequences of a subsisting judgment.
24. Similarly, granting the injunction would undermine the principle of finality. The Applicant has not demonstrated any new or existing right in the suit property that would justify an injunction.
25. In the end, I find that the application dated 10<sup>th</sup> February 2025 is devoid of merit and is hereby dismissed with costs.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF: -**

Ms Muthee holding brief for Ms Kirimi for the Appellant/Applicant

ORIGINAL