IN THE COURT OF

APPEAL AT NYERI

(CORAM: M'INOTI, KANTAI, ALI-ARONI,

JJ.A) CIVIL APPLICATION NO. E079 OF

2025

BETWEEN

MARIKO MWANGI WAINAINA.....APPLICANT

AND

AGNES WANGARI MAGUTA.....RESPONDENT

(Application to reverse or vacate the orders of the Environment & Land Court at Murang'a (Gacheru J.) dated 20th May 2025

in

ELCA No. 035 of 2024)

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RULING OF THE

COURT

1. The application before the Court is an unusual one for several reasons. First, it purports to be taken out under **Order 42** ***rule***

1 of the ***Civil Procedure Rules***, which does not apply to applications in this Court. Second, it is not taken out under any of the rules of this Court that allow interlocutory

applications. Lastly, the application seeks final orders rather

than interim orders, which are normally granted pending the hearing and determination of an appeal or intended appeal.

2. The prayers in the application are formulated as follows:

    i) The application be heard ex parte in the first instance due to its urgency;

    ii) That the orders issued by the superior court on 20/5/2025 be reversed and or vacated as they are bad in law and a serious travesty of justice;

    iii) The costs of this application be borne by the respondent.

3. Other than the fact that the first prayer is spent, under the ***Court of Appeal Rules***, the Court does not entertain and determine *ex parte* applications. All the parties must be heard, unless one elects not to appear after due notification of a hearing.

4. The second prayer seeks final orders rather than interim orders pending the hearing and determination of an intended appeal. As the Court made clear in ***Equity Bank Limited v. West Link Mbo Limited*** [2013] eKLR, interlocutory

applications in this Court are not an end in themselves. They

are intended to maintain some status pending appeal, to avoid

a pending or intended appeal being rendered nugatory by the time it is heard and determined. The orders sought in the second prayer can only issue in an appeal, not in an interlocutory application. If the prayer sought by the applicant were to be granted, then what would be there to hear in the appeal?

5. As far as we can tell from the record, the background to the application is as follows. The applicant filed a suit in the ***Senior Principal Magistrate's Court*** at ***Kigumo*** against the respondent for trespass to ***LR No. Loc. 18/Gachocho/415*** and its subdivisions, namely, ***LR No. Loc. 18/Gachocho/4224*** and ***4225 (the suit properties)***. He prayed for eviction of the respondent therefrom, an injunction to restrain her from interring one *Waweru Rianu* in any of the suit properties; costs and interest.

6. After hearing the matter, the subordinate court found in favour of the applicant and issued the orders as prayed. The respondent was aggrieved and preferred an appeal in the ***Environment and Land Court (ELC)*** at ***Murang'a***.

On 28th March 2025, the respondent applied in the ELC for stay of

execution of the judgment of the subordinate court and for an order for maintenance of the *status quo* by the parties pending the hearing and determination of the appeal.

7. By the ruling dated 20th May 2025, ***Gacheru, J.***, found merit in the application and ordered the parties to maintain the *status quo* until the hearing and determination of the appeal. The applicant was aggrieved and filed a notice of appeal on 27th May 2025, followed by the application now before the Court.

8. In support of the application, the applicant filed written submissions dated 5th September 2025, which are in substance submissions against the merits of the order of the ELC. The applicant asserted that the ELC overreached itself by entertaining the respondent's application for stay of execution and by holding that the eviction of the respondent was not complete. He also contended that the order from the ELC would cause him great inconvenience, keep him from enjoyment of the fruits of his judgment, and lead to further delay in the resolution of the dispute.

9. It was the applicant's further submission that the ELC erred

in holding that the execution of the judgment of the

subordinate court was incomplete whereas it had been executed and there was nothing to stay; by failing to find that the respondent was not the registered owner of the suit properties and had no proprietary interest therein; and by holding that the applicant would not suffer any prejudice if stay of execution was granted. For those reasons, the applicant urged the Court to vacate the impugned orders of the ELC.

10. The respondent opposed the application vide a replying affidavit sworn on 12th June 2025, written submissions dated 25th August 2025 and supplementary submissions dated 8th September 2025.

11. Like the applicant, the respondent went to great lengths on the history of the dispute and the merits of the appeal now pending before the ELC. As far as is relevant to this application, the substance of the response is that the ELC exercised its discretion properly in making an order for ***status quo*** pending the hearing and determination of the appeal, and after it correctly found that the eviction in question was not complete. It was also contended that the

court correctly found that it was proper to let the respondent,

who has lived on the suit properties for a long time, continue her occupation until the hearing and determination of the appeal before the ELC, to ensure that it was not rendered nugatory.

12. The respondent also urged the Court not to grant the prayers sought by the applicant because they were tantamount to determining the dispute with finality in an interlocutory application. It was contended that the parties have already filed their submissions in the appeal before the ELC, which should be allowed to be heard and determined on the merits.

13. We have carefully considered this application. We have no doubt in our minds that it is an incompetent application in so far as it requires the Court to make final and dispositive orders in an interlocutory application. Even worse, that application is founded on provisions of the law that do not apply to this Court. What is before us is an appeal disguised as an interlocutory application. We simply cannot grant the kind of prayers sought by the applicant in this application. Those prayers can only be granted after

hearing the intended appeal on the merits.

14. Accordingly, we find the application dated 22nd May 2025 utterly misconceived and incompetent. The same is hereby struck off with costs to the respondent. It is so ordered.

Dated and delivered at Nyeri this 27th day of February, 2026

K. M'INOTI

.....
JUDGE OF APPEAL

S. ole KANTAI

.....
JUDGE OF APPEAL

A. ALI-ARONI

.....
JUDGE OF APPEAL

I certify that this is a True copy of the original
Signed
DEPUTY REGISTRAR