

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCA NO E025 OF 2025

DAVID NGIGI & 3 OTHERS.....APPELLANT

VERSUS

JAMES KAMANJA

GITHIOMI.....RESPONDENT

RULING:

In the Application dated 17/9/2025 for Stay of Execution of the Judgment of Honourable Charles Obulutsa delivered on 17/3/2022 in the Chief Magistrate’s Court, Nyahururu in CMELC No. 359 of 2018 pending the Hearing and determination of the intended Appeal and also for leave to file an Appeal out of time, the Appellants have attached a draft Memorandum of Appeal and in urging the Court that the same ought to be considered successfully, they depone that they were aggrieved by the aforesaid Judgment and that substantial loss would be occasioned by failure to grant the Application.

The 1st Appellant, David Ngigi swore an Affidavit in support of the Application of even date. The Judgment delivered against them was for eviction from two plots i.e. NYANDARUA/SABUGO/1751 and 7752 respectively, General Damages of Kshs. 300,000/- for trespass, a Permanent Injunction for interfering with the said parcels of land and costs of the suit plus interest. In the Affidavit

in support of the Application, David Ngigi, with authority of his Co-Applicants, depones that they were the Defendants in the lower Court and that the Respondent filed an Application for review post-Judgment, a year after the Judgment on 22/3/2023 which was dismissed and which was followed by an Application for contempt of Court for failure to vacate the suit land 7 months later on 17/10/2023 and the same was allowed on 2/4/2025 by the Honourable Nyangara Osoro, SRM.

He avers that why he could not file an Appeal in good time was because there was pending in Court an Application for Review of the Judgment which was only concluded on 2/4/2025. He depones that the 4 have an arguable Appeal with high chances of success and that the Respondent would not suffer any prejudice if the Decree is stayed.

In the Replying Affidavit sworn on 4/12/2025, the Respondent depones that the Application is bad in law, incompetent, a non-starter, an abuse of the process of the Court and that the same does not meet the settled principles of granting leave to file an Appeal out of time and/or for Orders of Stay of Execution.

Further, that the Application is only meant to delay the enjoyment of the fruits of his successful Judgment. He depones that having been dissatisfied with the Judgment of 17/3/2022, they filed an Appeal on 29/3/2023 in Nyandarua ELCA No. E007 of 2023, a copy of which has been attached to the Replying Affidavit which due to failure to prosecute, the same was dismissed following an

Application dated 16/6/2023. It is said to have been withdrawn vide the Appellants' Application dated 23/1/2024. An Application similar to the current one dated 30/4/2025 was also made which was dismissed on 3/9/2025 paving way for execution which has already commenced and which is being carried out by Tango Auctioneers.

The Respondent, and rightly so, depones that there should be an end to litigation and that the Applicants waived their right of Appeal the moment they filed the Application for Review of Judgment and are just engaged in forum shopping without documenting any sufficient reasons for the granting of the orders they seek. There is inordinate delay in filing the current Application in that Judgment was delivered on 17/3/2022 and the Application, which is an afterthought according to the Respondent, was filed on 17/9/2025.

Having heard both parties through their Affidavits and Submissions, it is my observation that the Applicants have been clinging on any plant on the banks of a flowing river as they drown.

This is demonstrated by the myriad of Applications they have filed, and this cannot go on unchecked. I agree with the Respondent that there has to be an end to litigation. Under Section 80 of the Civil Procedure Act: -

“any person who considers himself aggrieved,

- a. By a Decree or Order from which an Appeal is Allowed by this Act, but from which no Appeal has been preferred or,**
- b. By a Decree or Order from which no Appeal is allowed by this Act, may apply for a Review of Judgment to the Court which passed the Decree or made the Order and the Court may make such Order thereon as it thinks fit.**

This settles the issue of Review vis a vis Appeal.

The moment the Applicant filed the first memorandum of Appeal on 5/4/2023, the preference of an Appeal vis a vis Review was demonstrated and the Review Application thereafter ought not to have been entertained at all. Having had the said Application for Review dismissed on 26/3/2025, the Applicants cannot then turn to Appeal as an alternative recourse and therefore granting the Application for extension of time to Appeal would be a futile exercise since the intended Appeal would be a non-starter.

In view of the fact that the Application for filing an Appeal is disallowed, the stay of execution pending the hearing and determination of the intended Appeal would not be viable since there is no intended Appeal on the way.

The current Application dated 17/9/2025 is consequently dismissed. I grant the Respondent the costs of the Application and advise the Applicants that it is important to bring this matter to

an end unless they opt to proceed to a higher Court. This Court has spoken loud and clear.

The costs of this Application are awarded to the Respondent.

Ruling dated, signed and delivered at Nyandarua this 26th Day of February 2026.

MUGO KAMAU
JUDGE

In the presence of:

C/A Samson.

Advocate for the Appellant.....Mr. Odhiambo.

Advocate for the Respondent.....Ms. Wambui.