

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCA NO E020 OF 2025

GLADYS GATHONI NJOROGE.....APPELLANT

VERSUS

PETER WACHIENBI WACHIRA.....1ST

RESPONDENT

EDWARD MUGANE NJONJO.....2ND

RESPONDENT

RULING:

In the Appellant’s Application dated 22/7/2025 for Stay of Execution of the Judgment delivered on 2/5/2025 by the Honourable Mr. Hezekiah Keago, Chief Magistrate in Nyahururu ELC No. 91 of 2019, pending the Hearing and determination of the intended Appeal. The Appellant at one stage refers to the Court as Kisii Nyahururu (paragraph 2 of the prayers in the Memorandum of Appeal). The Appellant avers that the trial Magistrate in his Judgment made a Declaration that the transfer of Title No. NYANDARUA/OL-JORO-OROK SALIENT/9978 from the 2nd Respondent to the Appellant was fraudulent since the Appellant was not a bona fide purchaser for value of the said property and that the said Trial Magistrate ordered the cancellation of the Title and issued an order directing that the land be transferred to the 1st Respondent.

The Appellant intends to file an Appeal against the said Judgment and has even attached a copy of the Memorandum of Appeal in his Affidavit in support of his Application sworn on even date.

The Application is meant to preserve the substratum of the Appeal and ensure that the property is not disposed of by the 1st Respondent and/or the same is not dealt with in a manner that would render the Appeal nugatory. She further urges the Court that the Application is made in good faith and that no prejudice would be occasioned to the Respondent by the granting of the Application. She also assures the Court that she is ready and willing to comply with such reasonable conditions that the Court may grant so that she can pursue her Appeal. The conditions include the depositing of the Title Deed in respect TO NYANDARUA/OL-JORO-OROK SALIENT/9978 with the Court.

In her Affidavit in support of the Application sworn on even date, the Appellant is apprehensive that she would suffer substantial loss if the Application is not granted for the Appeal would be rendered nugatory. She says that the Application is made in good faith and that no prejudice would be occasioned to the Respondent if the Orders were granted but should the same remain in force and execution ensues, she would lose the suit property even should she be successful on Appeal.

In the Replying Affidavit sworn on 16/10/2025 by the 1st Respondent, Peter Wachieni Wachira, he depones that the Application by the Appellant is a sham, unfounded, unmerited and

an abuse of the Court process and should be dismissed with costs “ instantly”, that he has not been served with a copy of the Memorandum of Appeal or letter requesting for proceedings and that this Application was filed more than 3 months after the delivery of the Judgment, an inordinate delay without any explanation of such delay and that there is no documentation of the substantial delay but that the Respondent would suffer substantial loss in that the Appellant would dispose of the subject property which is still registered in her name. He says that he is a propertied man and would be able to refund the costs of the suit and the value of the property should the Appeal be successful.

He further depones that he does not intend to dispose of the property if the same were to be transferred to him which the Applicant no longer occupies since Judgment was delivered.

It is true that should this property change hands further, there would be hardship in reverting it to the party winning the case on Appeal and especially if the same is transferred to a party by the person who is unsuccessful on such Appeal. A balancing act is therefore necessary since this is a non-monetary Decree and I hereby order that this Application for stay is granted upon the Applicant depositing the Title Deed in respect of the property known as NYANDARUA/OL-JORO-OROK SALIENT/9978 in Court within 7 days of this Ruling and also deposit in Court the sum of Kshs. 150,000/= as deposit for costs within the next 30 days. Failure to meet any of the above 2 conditions on its due date, the Orders of Stay of Execution will automatically lapse. For the

benefit of doubt, the Respondent will continue occupying the subject land but shall not lease, sub-divide and/or dispose it or cut down the trees thereon (if any) or any permanent crops on the land or interfere with the same in any way save cultivating it in an arable and responsible manner but without changing its nature or soil condition in any way.

The costs of this Application shall abide the results of the Appeal.

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.....Ms. Kiplain.

Advocate for the 1st Respondent.....Ms. Wambui.