

**IN THE COURT OF  
APPEAL AT NAKURU**

**(CORAM: MATIVO, GACHOKA & KORIR, JJ.A.)**

**CIVIL APPEAL (APPLICATION) NO. NAK. E005 OF  
2026**

**BETWEEN**

**AGRICULTURAL DEVELOPMENT  
CORPORATION.....1<sup>st</sup> APPLICANT**

**LANDS LIMITED.....22<sup>nd</sup>**

**RESPONDENT AND**

**JASON KARANJA MBUGUA.....1<sup>st</sup>**

**RESPONDENT GODFREY W AINANA CHEGE.....**

**2<sup>nd</sup> RESPONDENT JOSPHAT KAUNDA**

**MAIKARA.....3<sup>rd</sup> RESPONDENT JOSEPH**

**KIPLANGAT KILISIO.....4<sup>th</sup>**

**RESPONDENT**

**JOSEPH MUNGAI KAMANO.....5<sup>th</sup> RESPONDENT**

**EDWIN MAINA.....6<sup>th</sup> RESPONDENT**

**WILLIM KANGETHE THUKU.....7<sup>th</sup> RESPONDENT**

**GIBSON MWANGI.....8<sup>th</sup> RESPONDENT**

*(Being an application for stay of enforcement and/or suspension of the warrants of arrest issued by the Environment and Land Court at Naivasha on 16th December 2025 (M.C. Oundo, J) dated 20th November 2025*

***in***

***ELC Land Civil Suit No. 101 of 2024)***

**\*\*\*\*\***

**RULING OF THE COURT**

1. The notice of motion before us is dated 16<sup>th</sup> January 2026. It is brought under Rule 5(2)(b) of the Court of Appeal Rules, 2022, Articles 159 and 164 of the Constitution and all other enabling provisions of the law.

2. The applicant prays for orders that pending the hearing and determination of this appeal, there be a stay of execution, stay of enforcement and/or suspension of the warrants of arrest issued by the Environment and Land Court at Naivasha on 16<sup>th</sup> December 2025 against the Managing Director and the Corporation Secretary of the 1<sup>st</sup> applicant arising from the Ruling delivered on 20<sup>th</sup> November 2025 in ELC Land Civil Suit No. 101 of 2024. The applicants also pray for stay of any sentencing, committal to civil jail, or any other coercive process founded upon the said warrants of arrest and the impugned ruling pending the hearing and determination of this appeal. Lastly, the applicants are also praying for costs of this application be in the appeal.
3. The grounds in support of the application are that the applicants have lodged a substantive appeal against the impugned judgement pursuant to which the Managing Director and the Corporation Secretary of the 1<sup>st</sup> applicant were found guilty of contempt of court; that warrants of arrest were issued against them; that their appeal is arguable and raises serious questions of law and fact, including but not limited to whether the applicable standard and burden of proof in contempt proceedings was established; that unless the warrants of arrest, sentencing and committal processes are stayed, the appeal will be rendered nugatory because the said officials stand exposed to arrest, committal to civil jail and loss of liberty before the appeal is heard and determined; that the prejudice to the applicants is irreversible and disproportionate; no prejudice will be suffered by the respondents if the stay is granted because the orders of the trial court shall remain enforceable should the appeal ultimately fail; and lastly,

it is in the interests of justice that the subject matter of the appeal be preserved.

4. The 3<sup>rd</sup> respondent on behalf of himself and the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents in opposition to the application swore the replying affidavit dated 19<sup>th</sup> February 2026. The salient points are: (a) the applicants deliberately failed to present themselves before the trial court thereby compounding the contempt; (b) the warrants are lawful and an inevitable consequence of contempt of court orders and refusal to submit to the authority of the court; (c) the applicants have not made any attempt to purge the contempt nor are they remorseful; (d) the applicants chose the path of impunity; (e) their appeal is not arguable nor will the appeal be rendered nugatory.
5. In opposition to the application, the 4<sup>th</sup> respondent swore the replying affidavit dated 5<sup>th</sup> February 2026. The main averments are: (a) the trial court issued orders requiring the *status quo* to be maintained, which meant that the respondents were to remain in possession of their respective parcels of land; (b) the applicants were served with the court order and they never disputed service in their response to the application before the trial court; (c) notwithstanding the said orders, the applicants' agents invaded the respondent's properties and demolished his house using a grader and a tractor owned by the 1<sup>st</sup> applicant as evidenced by an official search from the National Transport Authority and a photograph of the tractor; (d) the applicants and its employees were fully aware of the court orders; (e) the demolition was willful; (f) the trial court properly found the applicants guilty of contempt; (g) the applicants deliberately failed to appear before the trial court necessitating

issuance of warrants of arrest; (h) they failed to file submissions before the trial court being granted an

opportunity to do so before the issuance of the warrants; (i) the application does not satisfy the threshold.

6. When the application came up for virtual hearing before us today (2<sup>nd</sup> March 2026), learned counsel Miss Kolum appeared together with Miss Koskey for the applicants, Mr. Koyyoko appeared for the 4<sup>th</sup> respondent. Mr. Ogola for the 1<sup>st</sup> 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents did not appear, but he had filed written submissions.
7. We have considered the application, the grounds in support thereof, the rival affidavits, the parties' submissions, the authorities cited, and the law. For the sake of brevity, we find no reason to rehash the submissions here.
8. The jurisdiction of this Court under rule 5(2) (b) of this Court's Rules is discretionary and guided by the interests of justice. In the exercise of this discretion, the Court must be satisfied on the twin principles which are that the appeal is arguable and that if the orders sought are not granted and the appeal succeeds, the appeal will be rendered nugatory. This Court in the case of **Trust Bank Limited and Another vs. Investech Bank Limited and 3 Others** [2000] eKLR delineated the jurisdiction of this Court in such an application as follows:

***“The jurisdiction of the Court under Rule 5(2)(b) is original and discretionary and it is trite law that to succeed an applicant has to show firstly that his appeal or intended appeal is arguable, to put another way, it is not frivolous and secondly that unless he is granted a stay the appeal or intended appeal, if successful will be rendered nugatory. These are the guiding principles but these principles must be considered against facts and circumstances of each case...”***

9. We will consider whether the applicants have demonstrated at least a single *bona fide* arguable ground in order to warrant ventilation before this Court bearing in mind that an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous. (See **Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others** [2013] eKLR.
10. We have carefully considered the grounds set out in the motion and the memorandum of appeal bearing in mind that in considering an application brought under Rule 5 (2) (b) the Court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal. (See **Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others (supra)**). In our view, the appeal is arguable.
11. The other question is whether the applicants have demonstrated that absence of stay, the appeal will be rendered nugatory. Before addressing this ground, it is important for us to mention that the relief sought in this application being discretionary in nature, a party who seeks discretionary relief must act in good faith. This is a fundamental principle of equity, often referred to as the "clean hands" doctrine, which stipulates that a party seeking the court's assistance must not have engaged in improper, dishonest, or unfair conduct related to the subject of their claim.
12. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material facts which have a bearing on the adjudication of the issues raised in the case. In other words, he

owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material facts within his knowledge or

which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. (See **R. v. Kensington Income Tax Commissioner [1917] 1 KB 486.**

13. The uncompromising manner in which courts have enforced the requirement for a party to disclose all material facts is underscored by the fact a litigant is under a duty to disclose to the court all relevant information even if it is not to his or her advantage (See **Brinks-Mat Ltd vs Elcombe [1988] 3 ALL ER 188.** The material facts are those which it is material for the court to know in dealing with the issues before the court. The duty of disclosure therefore applies not only to material facts known to the applicant, but also to any additional facts which he would have known if he had made inquiries.
14. In their pleadings the applicants omitted to mention that they failed to appear before the trial court despite having been accorded the opportunity to show cause. This information was brought out in the replying affidavits. Answering questions from the court, the applicants' counsel confirmed that they were aware of the court order, but denied they were responsible for the demolition. If that was the case, one wonders why they never appeared before the trial court and persuade the court that they had nothing to do with the demolition.
15. Unlike remedies available as a matter of right, equitable remedies are discretionary. The court can decline to grant the orders even where they are merited. The court will assess the conduct of the

parties to determine if granting relief would be against "equity and good conscience". In essence, the court will not become an instrument of

injustice by aiding a party whose own actions have been unfair or dishonest in the matter before the court. The applicants were accorded a chance to appear before the trial court and tell their story, but they failed to attend court. More important, they did not disclose this fact to this Court at the earliest opportunity. In the peculiar circumstances of this case, we do not think the applicants deserve this courts' discretion.

16. Having found that the applicants do not deserve the discretionary orders sought, we see no reason to consider the second limb that is the nugatory aspect. In conclusion, we have said enough to demonstrate that this application is for dismissal. Accordingly, the application dated 16<sup>th</sup> January 2026 is hereby dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents.

**Dated and delivered at Eldoret this 2<sup>nd</sup> day of March, 2026.**

**J. MATIVO**

.....

**.... JUDGE OF**

**APPEAL**

**M. GACHOKA C. Arb, FCI Arb**

.....

**JUDGE OF APPEAL**

**W. KORIR**

.....

**JUDGE OF APPEAL**

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

***Signed***  
**DEPUTY REGISTRAR**