



Babu v Nderu (Sued as Administrator of the Estate of Gacheru Kanungu) (Civil Application E702 of 2024) [2026] KECA 439 (KLR) (6 March 2026) (Ruling)

Neutral citation: [2026] KECA 439 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E702 OF 2024
SG KAIRU & AO MUCHELULE, JJA
MARCH 6, 2026**

BETWEEN

KIARIE BABU APPLICANT

AND

AGNES WANJA NDERU (SUED AS ADMINISTRATOR OF THE ESTATE OF GACHERU KANUNGU) RESPONDENT

(Being an application for stay of proceedings and stay of execution from the Judgment of the Environment and Land Court of Kenya at Nairobi (Mogeni, J.) dated 24th May 2023 In ELC Case No. 270 of 2019)

RULING

1. In his application dated 18th December 2024, the applicant, Kiarie Babu seeks two main prayers. The first, prayer 3, is for an order of stay of proceedings and stay of execution of the judgment and decree given on 24th May 2023 in ELC Case No. 270 of 2019 pending hearing and determination of Court of Appeal Civil Application No. NAI. E095 of 2024. The second, prayer 4, is for an order of stay of proceedings and stay of execution of the judgment and decree given on 24th May 2023 in ELC Case No. 270 of 2019 pending hearing and determination of Civil Appeal No. E922 of 2023.
2. The application is based on the grounds appearing on the face of the application and the applicant's supporting affidavit. The subject matter of the dispute is a property known as Title Number Dagoretti/Riruta/2064 (the suit property). In the judgment delivered by the Environment and Land Court (ELC) at Nairobi on 24th May 2023, the applicant and his family were ordered to vacate the same. The applicant was also restrained, by an order of permanent injunction, from entering or interfering with the suit property. The judgment has not been exhibited and is not part of the record of the application before us. Only the decree issued by the ELC on 27th November 2023, is exhibited.



3. Prior to the present application, the applicant had moved the Court by his application dated 29th February 2024 in Civil Application No. NAI. E095 of 2024. In that application, the applicant sought orders of stay of execution of the judgment of 24th May 2023 in ELC Case No. 270 of 2019. That application was apparently not certified as urgent and was yet to be heard by the time the present application came up for hearing on 17th February 2025.
4. In effect, whilst Civil Application No. NAI. E095 of 2024 was still pending before the Court, rather than pursue it, the applicant opted to file the present application.
5. Appearing before us during the hearing of the application, learned counsel for the applicant Mr. Sean Ondabu in his written and oral submissions urged on the strength of the decision in *Butt vs. Rent Restriction Tribunal* [1982] KLR 417, that the Court has discretionary power to grant the orders sought, that in addition to the pending application No. NAI. E095 of 2024 in which similar orders are sought, there is also pending before the Court Civil Appeal No. E922 of 2023; that the applicant is at risk of being evicted from the property which he has invested in and developed; and that the appeal will be rendered nugatory unless the orders sought are granted.
6. There was no appearance by the respondent during the hearing of the application, and neither was there a response filed in answer to the application. We noted from the affidavit of service sworn by Sean Ondabu, that the application was served by email sent to the respondent's last known email address at Kituo Cha Sheria.
7. Notwithstanding the absence of a response from the respondent, in applications of this nature, the applicant is enjoined to satisfy the Court that the intended appeal is arguable and that if the orders sought are refused, and the appeal eventually succeeds, it will have been an exercise in vain. See *Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 Others* [2013] KECA 378 (KLR).
8. As already mentioned, the judgment of the ELC in Case No. 270 of 2019 delivered on 24th May 2023 is not part of the record of the application. Neither are the specific grievances with that judgment indicated either in the application or in the submissions. All that the applicant says is that there is a risk of his eviction. There is no demonstration of the errors attributed to the judgment. There is no material before us on the basis of which to assess whether the appeal is arguable.
9. We are also concerned that the present application is a duplication of the earlier application pending before the Court being Civil Application No. NAI. E095 of 2024. In the circumstances, the present application may well amount to an abuse of the process of the Court.
10. All in all, we are not persuaded that this is a proper case for the exercise of the Court's discretion in favour of the applicant. Accordingly, the application dated 18th December 2024 fails and is dismissed. We make no orders as to costs.
11. We regret the delay in delivering this ruling attributable to the demise of his Lordship Justice F. Ochieng, JA., who was a member of the bench. For the same reason the ruling is delivered pursuant to Rule 33(4) of the Court of Appeal Rules.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH 2026.

S. GATEMBU KAIRU, FCI Arb, C. Arb.

JUDGE OF APPEAL

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A.O. MUCHELULE
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

