



REPUBLIC OF KENYA



KENYA LAW
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**Kirui v Fedha & another (Environment and Land Appeal
E078 of 2025) [2026] KEELC 1247 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1247 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E078 OF 2025**

MAO ODENY, J

MARCH 5, 2026

BETWEEN

REBECCA CHEPCHIRCHIR KIRUI APPELLANT

AND

PHANICE ISIKHUNGU FEDHA 1ST RESPONDENT

**BOARD OF MANAGEMENT NJORO PRECIOUS SCHOOLS 2ND
RESPONDENT**

RULING

1. This ruling is in respect of the Notice of Motion application dated 11th November, 2025, by the Appellant seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That pending the hearing and determination of appeal Nakuru ELCA No. E078 of 2025, the Honourable court be pleased to issue a temporary injunction restraining the Respondents either by themselves, their agents, servants and/or employees from interfering with the Appellant's occupation, possession, evicting or demolishing the Appellant's homestead and or trespassing into or in any manner interfering with the Appellant's portion of land measuring three (3) acres now comprised in title number L.R Block 5/574 (Ogilgei) as demarcated and fenced on the ground.
 - e. That the costs of this application be provided for.



2. The application is based on the supporting affidavit of Rebecca Chepchirchir Kirui sworn on 11th November 2025, where she deponed that the Trial Magistrate upheld the Respondent's preliminary objection and struck out her suit Nakuru MCCC 1246/2013, on 28th October, 2025, on the ground that the Chief Magistrate's court, lacked the pecuniary jurisdiction to hear and determine the matter.
3. The Applicant deponed that the subject matter of the suit land she occupied ought to have been 3 acres and not the entire parcel L.R Njoro/Ngata Block 5/574 measuring 9.6 acres. Further that there was an illegal amalgamation of the suit parcel resulting in the 1st Respondent occupying the same, and urged the court to grant an order of temporary injunction pending the hearing and determination of the appeal, as the Respondents may evict her from her home.
4. The 1st Respondent Phanice Isikhungu Fedha filed her replying affidavit sworn on 24th November, 2025, and deponed that she bought the suit property Njoro/Ngata Block 5/574 (Ogilgei) from Mary Musivoli Kijusa (deceased) measuring 9.69 acres, and the Applicant bought 3 acres which was to be excised from Njoro/Ngata Block 5/502 which is different from the suit property.
5. She further deponed that there was no privity of contract between the Appellant and the Respondents. It was the Respondent's disposition that she bought the suit property in order to establish and expand the educational institution and that the public interest of the 2nd Respondent outweighs the Appellant's individual interest and urged the court to dismiss the application with costs.

Appellant's Submissions

6. Counsel for the Applicant filed submissions dated 3rd December 2025 and identified one issue for determination as to whether the Applicant is entitled to the orders of temporary injunction pending hearing and determination of the appeal, and relied on the case of *JWK V MGM (Civil Appeal E101 of 2024) [2025] KEHC 6208 (KLR)*.
7. Counsel further submitted that the Applicant faulted the Trial Magistrate's ruling that the suit property had a value in excess of Kshs.20 million, while she was only in occupation of 3 acres of the suit parcel.
8. Mr. Ndubi urged the court to grant an order of status quo to be maintained pending the hearing and determination of the appeal, and relied on the case of *Malonza V Absa Bank Kenya PLC & Another (Civil Appeal E273 of 2024) [2025] KEHC 14311*.
9. Counsel further submitted that the Applicant has met the conditions as stipulated in the case of *Giella V Cassman Brown (Supra)* and urged the court to allow the application as prayed

Respondents' Submissions

10. Counsel for the Respondent filed submissions dated 2nd February 2026, and identified two issues for determination, namely, whether the Applicant has demonstrated the appeal raises any genuine issue for determination and the second issue is whether the Applicant has established refusal of the court order for temporary injunction would render the appeal nugatory and/or the Applicant would suffer irreparable loss and/or balance of convenience.
11. On the first issue, it was his submission that at the time of filing the suit and the preliminary objection, the Chief Magistrate lacked the jurisdiction to hear and determine the suit, and relied on the cases of *Joseph Muthee Kamau & Anor V David Mwangi Gichure & Anor [2013] eKLR* and *Phoenix of EA Assurance Co. Ltd V SM Thiga t/a Newspaper service [2019] KECA 367*



12. Mr. Ndolo submitted that the pending appeal was frivolous as the Appellant failed to demonstrate any arguable ground, and that the suit did not exist as it was dismissed by the lower court for lack of jurisdiction and therefore this court sitting as an appellate court has no power to confer jurisdiction that never existed in the lower court.
13. Counsel further submitted that the Applicant shall not suffer any prejudice as she has an option of filing a competent suit in a court of competent jurisdiction, and urged the court to dismiss the application with costs.

Analysis and Determination

14. The main issue for determination is whether the Appellant has met the threshold for grant of temporary injunction pending hearing and determination of the appeal.
15. The law on temporary injunctions pending appeal is found under Order 42 rule 6 (6) Civil Procedure Rules, 2010, which provides as follows:

“Notwithstanding anything contained in sub-rule (1) of this Rule the High Court shall have powers in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with”.

16. In the case of *Patricia Njeri & 3 Others V National Museum of Kenya* [2004] KEHC 1614 (KLR) the court held that:
 - a. An order of injunction pending appeal is a discretionary matter which will be exercised against an applicant whose appeal is frivolous.
 - b. The discretion should be refused where it would inflict great hardship than it would avoid
 - c. The applicant must show that to refuse the injunction would render the appeal nugatory
 - d. The court should also be guided by the principles in *Giella V Cassman Brown & Co Ltd.*”
17. The Appellant filed a Memorandum of Appeal dated 10th November, 2025, against the ruling of the trial court in Nakuru CMCC 1246 of 2013, delivered on 28th October, 2025, whereby the court struck out the Appellant’s suit on the grounds that it lacked the pecuniary jurisdiction to hear and determine the suit.
18. The Appellant deponed that unless the orders are granted the Respondents will evict her from the suit property, but the Respondents submitted that the pending appeal was frivolous since the Appellant has failed to demonstrate any arguable ground.
19. In the case of *Madhupaper International Limited v Kerr* [1985] KECA 116 (KLR) the court found that:

“...it would be wrong to grant a temporary injunction pending appeal where the appeal is frivolous or where the injunction would inflict greater injustice than it would avoid.”



20. Further, in the case of Kenya Commercial Bank Limited V Nicholas Ombija [2009] KECA 228 (KLR) the court held that:

“...an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court.”

21. It is trite that an order of injunction pending appeal is a discretionary matter which will be exercised against an applicant whose appeal is frivolous. The Appellant must establish that he or she has an arguable appeal and not one where if an order of injunction is issued would inflict greater injustice than can be avoided.

22. It should be noted that the Appellant’s suit in the lower court was struck out on the ground of lack of pecuniary jurisdiction and not dismissed after the case had been heard. It follows that the Appellant still has an opportunity to file the case in a court of competent jurisdiction without being locked out by the doctrine of res judicata.

23. Consequently, I find that the Applicant has not met the threshold for the grant of a temporary injunction pending appeal; hence, the application is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 5TH DAY OF MARCH 2026.

M. A. ODENY

JUDGE

