



Mbayaki (Being sued as the administrator of the Estate of Pius Masinde Sisa) v Siisa (Suing as the administrator of the Estate of Francis Murunga Sisa) & another (Environment and Land Appeal E005 of 2026) [2026] KEELC 1149 (KLR) (25 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1149 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E005 OF 2026
A NYUKURI, J
FEBRUARY 25, 2026**

BETWEEN

PATRICK MASINDE MBAYAKI (BEING SUED AS THE ADMINISTRATOR OF THE ESTATE OF PIUS MASINDE SISA) APPELLANT

AND

JANE ATUBUKHA SIISA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF FRANCIS MURUNGA SISA) 1ST RESPONDENT

WEST KENYA SUGAR COMPANY 2ND RESPONDENT

RULING

Introduction

1. Before court is a notice of motion dated 20th January 2026 filed by the appellant seeking orders of temporary injunction against the 1st respondent, by herself, her agents, servants and or anybody working under her instructions from entering, cultivating and/ or carrying on any activities on L.R. No. Bunyala/Budonga/277 pending the inter partes hearing and determination of this appeal. He further sought orders that the OCS Navakholo Police Station to oversee the compliance of the above orders. He also sought costs.
2. The application is supported by the affidavit sworn by the applicant dated 20th February 2026. He stated that he was the registered proprietor of the parcel of land known as No. Bunyala/ Budonga/277, which he has been using for cane cultivation.
3. That in Succession Cause No. Kakamega HC Succession Appeal No. E002 OF 2022, the court held that the family including the 1st respondent was to share parcel No. Bunyala/ Budonga/282 and not No. Bunyala/ Budonga/277. That the respondent got her share in Bunyala/ Budonga/282 and now claims parcel No. Bunyala/ Budonga/277.



4. That without any colour of right, the 1st respondent harvested sugarcane from the suit property and ferried it to the 2nd respondent and that payment thereof may be made any time. That the 1st respondent intends to reap from where she did not sow. That this appeal is against the lower court's decision made in regard to his application dated 4th August 2025, which appeal has high chances of success.
5. The application was opposed. The 1st respondent filed replying affidavit dated 30th January 2026. She stated that although the suit property is registered in the appellant's name, she is the one in use and occupation of the same. That the 3 acres of the suit land were meant for her late husband Francis Murunga Sisa, the appellant's brother.
6. That the appellant filed succession in respect of the estate of the Late Francis Murunga Sisa without involving her and her children and that by the time she discovered what had happened, the appellant already had title. That the appellant knows that since she got married to his late brother, she has extensively developed the three acres and planted sugarcane thereon.
7. She stated that she solely tilled, planted, weeded and tendered the cane on the suit property and the appellant never raised any objection at any point. That this was not the first time she had planted sugarcane on the suit property as the last time she supplied sugarcane from the suit property was in 2019.
8. That it is the disputed sugarcane that is her sole source of livelihood where she gets funds to pay for her children's school fees. That her claim from the suit property is only 3 acres which belong to her late husband. That the appellant is acting in bad faith seeking for proceeds of sugarcane he never planted. That the appellant has failed to disclose to court that he has a share on the suit property measuring 4.5 acres, while she only has 3 acres. That the application is meant to delay and derail hearing of the suit in the lower court and is an abuse of the court process. No response was filed by the 2nd respondent.
9. The application was disposed by way of written submissions. On record are submissions filed by the appellant dated 26th January 2026 and those filed by the 1st respondent dated 30th January 2026; both of which this court has carefully considered.

Analysis and determination.

10. The court has carefully considered the application, response thereto and filed submissions. The single issue that arise for the court's determination is whether the applicant has met the threshold for grant of orders of temporary injunction, pending hearing and determination of this appeal.
11. Order 42 Rule 6 (6) of the Civil Procedure Rules provides for the jurisdiction of the court to grant orders of temporary injunction pending appeal as follows;

Stay in case of appeal [Order 42, rule 6]

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

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5. Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power 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.”
12. Therefore, where an applicant demonstrates that they have complied with the procedures for instituting an appeal from a subordinate court or tribunal, and further satisfy the conditions for grant of temporary injunction, the court may grant orders of temporary injunction pending appeal. The conditions for grant of temporary injunction are well settled. An applicant must demonstrate an arguable case with chances of success; show that if the injunction is not granted, they stand to suffer irreparable injury and the balance of convenience should tilt in favour of the applicant. (See *Giella v Cassman Brown* (1973) EA 358)
13. In the instant matter, the applicant stated that the suit property is registered in his name. That his appeal has high chances of success. However, the appellant did not attach copies of the application and response in regard to the orders appealed against for the court to juxtapose what was argued for and against the application, in view of the ruling appealed against, and therefore at this point, the court has not been availed any material that would enable it ascertain the arguability of the appeal herein.
14. In addition, while the respondent stated that she is the one that incurred the cost of planting and tending the sugarcane crop on the suit property, which she supported by provision of receipts, the only reason the appellant wants the cane proceeds not to be paid to the respondent, is because he is the registered proprietor of the suit property, but does not deny not having planted or tended the sugar cane crop. Besides, the 1st respondent’s assertion that she is in occupation of the suit property and has a house thereon was not disputed. Granting an injunction to stop her from entering the suit property will be a constructive eviction, which this court cannot grant before hearing the parties.
15. For those reasons, the appellant has not demonstrated an arguable appeal to warrant grant of a temporary injunction pending appeal. Therefore, the application dated 20th January 2026 lacks merit and the same is hereby dismissed with costs.
16. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 25TH DAY OF FEBRUARY, 2026

A. NYUKURI

JUDGE

In the presence of;

The appellant in person

The 1st respondent

No appearance for the 2nd respondent

Court Assistant: Delphine

