

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ELC PETITION E001 OF 2025**

**RUFUS J M MUGWIKA .....PETITIONER**

**VERSUS**

**ISAIAH KARIRA [sued on his own behalf and as the legal representative  
of the estate of the late SAMUEL M’IMAGANA..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND ADJUDICATION**

**SETTLEMENT OFFICER .....2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR MERU ..... 3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL .....4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before me is the Notice of Motion Application dated the **4<sup>th</sup> of February, 2026**, brought pursuant to the provisions of **Order 43 Rule 6; Order 51 Rule 1 of the Civil Procedure Rules 2010: Sections 1A, 1B, 3 and 3B of the Civil Procedure Act** and all enabling provisions of the law and wherein the Applicant has sought various reliefs.

2. The reliefs sought are:

- i. *That the Honourable Court be pleased to certify this application urgent, service therefore be dispensed with and grant prayer [b] and [d] herein to preserve the substratum of this matter.*
- ii. *That this Honourable court be pleased to give an injunction order restraining the respondents by themselves, their agents, families, employees and or any person action on*

*their behest from evicting the Applicant, herein, fencing off, offering for sale or charge or in any other way interfering with parcel No. Ruiru/Rwarera/10075, pending the hearing and determination of this Application.*

- iii. *That this Honourable court be pleased to give an injunction order restraining the respondents by themselves, their agents, families, employees and or any person action on their behest from evicting the Applicant, herein, fencing off, offering for sale or charge or in any other way interfering with parcel No. Ruiru/Rwarera/10075, pending the hearing and determination of the intended appeal.*
- iv. *That the Honourable court be pleased to grant stay of execution of the judgment delivered on 4<sup>th</sup> December, 2025 pending the hearing and determination of this application.*
- v. *That this Honourable court be pleased to grant stay of execution of the judgment delivered on 4<sup>th</sup> December, 2025 pending the hearing and determination of the intended appeal*
- vi. *Costs be provided for.*

3. The subject application is premised on various grounds which have been enumerated in the body thereof. In particular, the Applicant has contended that same filed the subject petition challenging the decisions of the Land Adjudication and Settlement Officer; the petition was heard and dismissed *vide* judgment rendered on the 04/12/2025; the Petitioner was/is aggrieved by the judgment and the consequential decree; the Petitioner has since filed and served a Notice of Appeal; the intended appeal raises arguable issues; the intended appeal will be rendered nugatory; the Applicant shall suffer irreparable harm; the Applicant has established a basis for the grant of the

orders sought; and the court is seized of jurisdiction to grant the reliefs sought.

4. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on the 11/02/2026; and wherein same has opposed the application. The Respondent has raised various issues. The issues raised by the Respondent are: The Petitioner/Applicant has neither established nor proven a basis for the grant of the orders sought; the Honourable court is divested of jurisdiction to grant orders of temporary injunction; the decree of the court was a negative decree; the Applicant does not reside on or occupy the suit property; on the contrary it is the 1<sup>st</sup> Respondent and his siblings who occupy the suit property; and the grant of the orders sought shall occasion serious harm to the 1<sup>st</sup> Respondent and his siblings.
5. Flowing from the foregoing, the 1<sup>st</sup> Respondent has contended that the subject application is *devoid* of merits; misconceived and thus legally untenable. The court has been implored to dismiss the application with costs.
6. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents have neither filed any replying affidavit nor grounds of opposition. In any event, learned counsel Ms. Miranda [Senior Litigation Counsel] on behalf of the Attorney General indicated that same shall not be participating in the hearing of the application. In short, learned counsel intimated that same shall leave the matter to the court.
7. The application under reference came up for hearing on the 23 of February, 2026, whereupon the court directed that the application be heard and disposed of by way of oral submissions. Suffice it to state that the application was indeed canvassed by/ on behalf of the parties.

8. Learned counsel for the Petitioner/Applicant adopted the grounds at the foot of the application; reiterated the contents of the supporting affidavit; the annexures thereto and thereafter highlighted four [4] key issues.
9. The issues canvassed by/on behalf of the Petitioner/Applicant are: The Applicant has since filed/lodged the requisite notice of appeal; the notice of appeal constitutes; serves as an appeal; the Applicant has established a basis for the grant of the reliefs sought; the Orders of the Court were/ are positive in nature; the Orders are capable of Stay of Execution; and the court is seized of the requisite jurisdiction to entertain the subject application.
10. The 1<sup>st</sup> Respondent adopted the contents of the replying affidavit sworn on the 11.02.2026 and thereafter canvassed three [3] key issues. The issues canvassed by the 1<sup>st</sup> Respondent are: the court is divested of jurisdiction to grant orders of temporary injunction pending the hearing of the intended appeal; the orders of stay sought cannot issue on the face of a negative decree; and the Applicant is not deserving of the orders sought.
11. Having reviewed the application dated 04.02.2026; the supporting affidavit thereto; the replying affidavit in opposition thereto; the oral submissions made by/on behalf of the parties; and upon taking into account the applicable law, the issues that crystalize for determination are: **Whether the court is seized of the requisite jurisdiction to grant orders of temporary injunction either as sought or at all; whether the dismissal of the petition resulted in to negative orders or otherwise; whether negative orders can attract an order of stay of execution pending appeal or otherwise; and what reliefs [if any] ought to issue.**

12.Regarding the first issue, namely; whether this court is seized of jurisdiction to grant an order of temporary injunction pending the hearing and determination of the intended appeal, learned counsel for the Applicant contended that the court is seized of the requisite jurisdiction to grant the orders sought. In particular, learned counsel contended that the provisions of **Order 43 Rule 6 [1] of the Civil Procedure Rules, 2010** as read together with **Order 42 Rule 6 [6] of the Civil Procedure Rules**, bestow upon this court the jurisdiction to grant the orders of temporary injunction.

13.Additionally, learned counsel for the Applicant has submitted that the Applicant has established a basis to warrant the grant of the orders of temporary injunction. Moreover, it has been contended that the Applicant shall be disposed to suffer irreparable loss/harm unless the orders are granted.

14.On the other hand, learned counsel for the 1<sup>st</sup> Respondent has submitted that the provisions of **Order 42 Rule 6[1] of the Civil Procedure Rules**, as read together with **Order 42 Rule 6[6] of the Civil Procedure Rule** do not vest jurisdiction on this court to grant an order of temporary injunction. In short, learned counsel for the 1<sup>st</sup> Respondent has posited that the court is divested of jurisdiction to issue the orders of temporary injunction.

15.I have considered the rival submissions. I take the following position. The Provisions of **Order 42 Rule 6[1] of the Civil Procedure Rules 2010** relate to and concern the grant of two pertinent orders. The orders envisaged are: order of stay of execution pending appeal; and order of stay of proceedings

pending appeal. Moreover, the provision under reference highlights that the named orders can only issue or be granted subject to sufficient basis/cause being shown.

16. Additionally, it is worthy to underscore that any Applicant keen to partake of the orders of stay of execution pending appeal must thereafter proceed and demonstrate that the conditions alluded to under **Order 42 Rule 6[2] of the Civil Procedure Rules** have been met. Only then shall an order of stay of execution issue or be granted.

17. It is equally important to highlight that the provisions of **Order 42 Rule 6[2] of the Civil Procedure Rules** do not apply to stay of proceedings. For good measure, the parameters to be established before partaking of an order of stay of proceedings are separate and distinct. Nevertheless, the subject ruling does not relate to or concern stay of proceedings. I shall therefore say no more.

18. Fast forward, it is important to recall and reiterate that neither the provisions of **Order 42 Rule 6[1] or 6[2] of the Civil Procedure Rules** relate to an order of temporary injunction. Simply put, the named provisions, do not, in my view envisage the grant of an order of temporary injunction. It then means that a party seeking such an order must look elsewhere.

19. I also wish to point out that the closest that **Order 42 of the Civil Procedure Rules** comes to addressing the question of temporary injunction, is in respect of Rule 6[6] thereof. However, there is no gainsaying that the said provision only applies where an appeal has been mounted against the

decision of the lower court or tribunal to this court. On the contrary, the said provision does not suffice where the appeal or intended appeal is from this court to the Honourable Court of Appeal.

20. In my humble view, the deployment of order 42 Rule 6 of the Civil Procedure Rules as the basis for the grant of orders of temporary injunction is based on misapprehension. Simply put, the said provisions do not aid the Applicant herein. In addition, the said provisions cannot anchor the prayer for temporary injunction.

21. Flowing from the foregoing, I come to the conclusion that the prayer for the temporary injunction sought by and on behalf of the Applicant is premature; misconceived and legally untenable.

22. Moreover, even assuming that this court had the jurisdiction to grant the orders of temporary injunction pending the hearing and the determination of the intended appeal [ which I have dealt with], I am afraid that such an order cannot issue against the registered proprietor of the land. Instructively, the suit property is registered in the name of the father of the respondent. To this end, an order temporary injunction [if any] shall operate to negate the title which currently inheres beneficially to the estate of the deceased.

23. Before concluding on this matter, it suffices to cite the decision of the Court of Appeal in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)**.

24. The court of appeal stated thus:

***“It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.”***

25. The second issue for consideration relates to whether the orders of the court which were issued on the 04.12.2025 were positive or negative orders. To start with, it is common ground that the court dismissed the petition that was filed by/on behalf of the Petitioner. Thereafter, the court ordered/decreed that the Petitioner shall pay costs to the Respondents.

26. Learned counsel for the Applicant has submitted that even though the petition was dismissed, the inclusion of the order pertaining to payment of costs, made the order a positive order. To this end, learned counsel invited the court to find and hold that the order arising from the judgment was a positive order and not otherwise.

27. On the contrary, learned counsel for the 1<sup>st</sup> Respondent submitted that the petition was dismissed. Moreover, it has been contended that the dismissal of the petition constitutes a negative order. In addition, it has been submitted that the award of costs, which was to be borne by the Applicant, does not make the order a positive order.

28. In my humble view, the petition by the Applicant was dismissed. The dismissal of the petition birthed a negative order. The mere fact that the court decreed payment of costs by the Petitioner does not make the impugned order positive in nature. I am afraid that the submissions by

learned counsel for the Applicant are based on misconception and misapprehension of what constitute[s] a positive order.

29. Be that at it may, my answer to the submissions by learned counsel for the Applicant lies in the holding of the court of appeal in the case of **Western College of Arts and Applied Sciences v EP Oranga & 3 others [1976] KECA 15 (KLR)**.

30. The Court stated as hereunder:

*“The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In Wilson v Church the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, it is so ordered.”*

31. I now wish to turn to the issue of whether an order of stay of execution pending the hearing and determination of the intended appeal can issue or be granted. It bears repeating that the judgment of the court, which is sought to be appealed against, dismissed the petition. The judgment and the resultant decree are negative in nature.

32. The question that does arise is whether such a decree or order can be the subject of stay of execution, either in the manner sought or otherwise? The answer to this question is discernable from the decision of the Court of appeal in the case of **Registered Trustees, Kenya Railways Staff**

**Retirement Benefits Scheme v Millimo, Muthomi & Co. Advocates & 2 others (Civil Appeal (Application) E383 of 2021) [2022] KECA 491 (KLR).**

33. The Court of Appeal reiterated the established position and held thus:

*Negative orders cannot be stayed. We reiterate the sentiments of the predecessor of this Court in its decision in Western College of Arts and Applied Sciences vs Oranga & Others (1976-80) 1 KLR, where the Court stated in respect of stay of execution as follows: “But what is there to be executed under the judgment, the subject of the intended appeal” The High Court has merely dismissed the suit with costs. Any execution can only be in respect of costs. In Wilson v Church, the High Court had ordered the trustees of a church to make a payment out of that fund. In the instant case, the High Court has not ordered any parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court Judgment for this Court, in and application for stay, it is so ordered.” Further, in the more recent case of Kenya Commercial Bank Limited vs Tamarind Meadows Limited & 7 Others [2016] eKLR, the Court of Appeal expounded on stay of execution stating*

*16 “In Kanwal Sarjit Singh Dhiman vs Keshavji Juvraj Shah [2008] eKLR, the Court of Appeal, while dealing with a similar application for stay of a negative order, held as follows: “The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December, 2006. The order of 18th December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see Western College of Arts & Applied Sciences vs. Oranga & Others\_\_ [1976] KLR 63 at page 66 paragraph C).”*

34. The dismissal of the petition gave rise to a negative order. The said order cannot be stayed. Moreover, the aspect touching on costs cannot be the subject of stay. In any event, it is trite that costs follow the event unless

otherwise stated by the court. I am afraid that the order of stay of execution sought is misconceived.

35. Finally, I wish to address the question of reliefs. It is common ground that the Applicant herein has since filed and served a notice of appeal. The notice of appeal serves as an appeal in terms of the provisions of **Order 42 Rule 6[4] of the Civil Procedure Rules.**

36. Additionally, it is not lost on me that the suit property forms the substratum of the appeal. It then means that there is need to preserve the suit property, so as to avert any alienation, sale, charge or disposal thereof during the pendency of the appeal. Suffice it to state that alienation of the suit property [if at all] during the pendency of the appeal, will defeat the outcome of the intended appeal. Furthermore, such an endeavor will be contrary to the doctrine *Lis Pendence*. [See the decision in the case of **Naftali Ruthi Kinyua versus Patrick Gachure Thuita [2015] eKRL; and Cooperative Bank of Kenya Limited versus Patrick Kagehe Njuguna [2017] eKLR**]

37. Even though I have found and held that an order of temporary injunction and an order of stay of execution, do not avail, it is important to ensure that the crux of the appeal/intended appeal is preserved. The preservation can be undertaken in such a manner that balances the rights of the Applicant as well as the interest of the 1<sup>st</sup> respondent. Suffice it to state that a court of law must balance the rights of the parties and foster the realization of the rights under **Article 48 of Constitution 2010.** [See also the holding in the case of **Butt versus Rent Restriction Tribunal [1979] eKLR**]

38.To my mind, an order for maintenance of status quo would suffice. The said order will ensure that the 1<sup>st</sup> Respondent and his siblings will remain in occupation, possession and continue to use the suit property, albeit without selling, alienating and disposing of same. In the end, either party will be duly covered.

### **CONCLUSION**

39.The Applicant sought an order of temporary injunction pending the hearing and determination of the intended appeal. However, I have found and held that this court is not bestowed with the requisite jurisdiction to grant such an order by dint of Provision of **Order 42 of the Civil Procedure Rules**. Furthermore, it is also common ground that an order of stay of execution cannot issue in respect of a negative order.

40.Nevertheless, there is no gainsaying that this court is seized of the inherent/residual/intrinsic jurisdiction to ensure that the substratum of the appeal/intended appeal to the court of appeal is not alienated. In any event, the scope and tenor of the inherent jurisdiction of the court is unfettered. [See the decision of the **Supreme Court in the case of Narok County Government versus Livingstone Kunini Ntutu [2018] eKLR**].

### **FINAL ORDERS**

41.From the foregoing analysis, the final orders that commend themselves to the court are:

- i. *The Application dated 04.02.2026 be and is hereby dismissed.*
- ii. *Cost of the application shall abide the outcome of the Intended Appeal.*
- iii. *Nevertheless, and to preserve the substratum of the intended appeal, there be and is hereby issued an order for the maintenance of status quo over and in respect of the suit property.*
- iv. *The status quo denotes that the 1<sup>st</sup> Respondent and his siblings shall continue to occupy, possess and use the suit property pending the hearing and determination of the intended appeal.*
- v. *However, the 1<sup>st</sup> Respondent shall not alienate, sell, charge or otherwise dispose of the suit property during the pendency of the appeal/intended appeal.*
- vi. *The Applicant shall provide an undertaking in the sum of Kenya Shilling 400,000/= only, to be deposited in an escrow account in the names of the advocate for the Applicant and the 1<sup>st</sup> respondent.*
- vii. *The Escrow account in terms of clause [vi] above shall be opened and operationalized in a reputable bank or financial institution in Kenya within 45 days from the date hereof.*
- viii. *In default by the Applicant to provide the undertaking above, the order for maintenance of status quo shall lapse and /or stand discharged.*

42. It is so ordered.

**DATED SIGNED AND DELIVERED AT MERU ON THE 24<sup>TH</sup> DAY OF  
FEBRUARY, 2026.**

**OGUTTU MBOYA, FCIArb; CPM [MTI-EA].**

**JUDGE**

**In the presence of:**

Naserian – Court Assistant

Mr. Kuria Karatu for the Petitioner/Applicant

Mr. Kariuki for the 1<sup>st</sup> Respondent

Ms. Miranda [Senior Litigation Counsel] for the 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> Respondent