



**Riwiki & another v Mati & 10 others (Civil Appeal (Application)  
E215 of 2023) [2026] KECA 353 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 353 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) E215 OF 2023  
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA  
FEBRUARY 27, 2026**

**BETWEEN**

**JAMES MURITHI RWIGI ..... 1<sup>ST</sup> APPLICANT  
ALFRED EDWIN MUTURA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JENNIFFER KANINI MATI ..... 1<sup>ST</sup> RESPONDENT  
TERATISIO MURIUKI RWIGI ..... 2<sup>ND</sup> RESPONDENT  
MATI RWIGI ..... 3<sup>RD</sup> RESPONDENT  
NDEKE RWIGI ..... 4<sup>TH</sup> RESPONDENT  
DAVID NYAGA RWIGI ..... 5<sup>TH</sup> RESPONDENT  
MUTEGI RWIGI ..... 6<sup>TH</sup> RESPONDENT  
MBAKA RWIGI ..... 7<sup>TH</sup> RESPONDENT  
GITONGA RWIGI ..... 8<sup>TH</sup> RESPONDENT  
MUTHONI RWIGI ..... 9<sup>TH</sup> RESPONDENT  
VERGINIA RWIGI ..... 10<sup>TH</sup> RESPONDENT  
LENAH RWIGI ..... 11<sup>TH</sup> RESPONDENT**

*(Being an application for maintenance of status quo and stay of execution of  
the judgment of the High Court of Kenya at Chuka (L. W. Gitari J.) dated  
7th November, 2023 in Miscellaneous Succession Cause No. E010 of 2021)*



## RULING

### Background

1. James Murithi Rwigy and Alfred Edwin Mutura (the applicants) filed a notice of motion dated 20<sup>th</sup> December 2023 pursuant to Sections 3A and 3B of the *Appellate Jurisdiction Act* and Rules 5(2)(b) and 42 of the Court of Appeal Rules, 2022.  
  
Jenniffer Kanini Mati, Teratisio Muriuki Rwigy, Mati Rwigy, Ndeke Rwigy, David Nyaga Rwigy, Mutegi Rwigy, Mbaka Rwigy, Gitonga Rwigy, Muthoni Rwigy, Verginia Rwigy and Lenah Rwigy are the 1<sup>st</sup> to 11<sup>th</sup> respondents respectively.
2. The application sought orders for maintenance of status quo and stay of execution of the ruling delivered on 7<sup>th</sup> November 2023 pending the hearing and determination of the application and the appeal. The application also sought a stay of proceedings in the High Court pending the hearing and determination of the application and the appeal.
3. The application is predicated inter alia on the grounds that the applicants have an arguable appeal with good prospects of success; that the impugned ruling ordered for the revocation of the confirmed grant dated 21<sup>st</sup> February 2012 and cancellation of entries to the register issued pursuant to the said grant; that the impugned ruling has the net effect of disinheriting the 1<sup>st</sup> applicant from his rightful share and defeat the 2<sup>nd</sup> applicant's right to property that was subsequently acquired as innocent purchaser for value without notice; that the application has been filed without delay; that the balance of convenience favours a stay of execution order being granted in favour of the applicants pending the determination of the application and pending the hearing and determination of the appeal; and that unless the orders sought are granted, the applicants will be exposed to great prejudice and the intended appeal will be rendered nugatory.
4. The application is supported by the affidavit of the 2<sup>nd</sup> applicant who deponed on his own behalf and that of the 1<sup>st</sup> applicant that the 1<sup>st</sup> applicant was at all material times the younger son to and the administrator of the Estate of M'Ntiba (Deceased); that until the proceedings of the High Court, he was not a party to the earlier proceedings in respect to the estate of the Deceased; that from the record, he is aware that the 1<sup>st</sup> applicant and the respondent/protestors were allocated land from the estate of the Deceased based at their houses/mother's burial site from amongst the 3 widows of the Deceased; that the applicant was allocated Land Number Magumoni/1 Tugururu/2231 and Magumoni/I Tugururu/2232 the suit properties; that subsequently the 1<sup>st</sup> applicant sold and transferred to him land parcel Magumoni/I Tugururu/2232 and so did one Gemesio Gitonga Karaara in respect of Magumoni/1 Tugururu/2231 in June and September 2013 respectively.
5. Further, that the impugned ruling ordered for the revocation of the confirmed grant dated 21<sup>st</sup> February 2012 and cancellation of entries to the register issued pursuant to the said grant; that being aggrieved with the ruling and ensuing orders, the applicants instructed their advocates to file an appeal; and that he is apprehensive that the respondents may at any time move and enforce the ruling and impugned orders, thereby defeating the appeal to the applicants' untold loss and prejudice.

### Submissions by Counsel

6. At the hearing of the application, the applicants were represented by Messers Shabaan & Co. Advocates who had filed written submissions which they orally highlighted. There was no representation for the respondents and no written submissions had been filed on their behalf.



7. Counsel for the applicants submitted that the applicants' appeal is arguable and will be rendered nugatory if stay is not granted. Counsel further submitted that the High Court overlooked the applicable laws and legal doctrines and thus arrived at an absurd finding which unless overturned, will occasion a miscarriage of justice.
8. On the nugatory aspect, counsel submitted that the appeal will be rendered nugatory if the orders sought are not granted and the appeal succeeds; that the orders sought are for maintenance of the status quo and stay of execution of the impugned ruling whose net effect is to disinherit the 1<sup>st</sup> applicant from his rightful share and defeat the 2<sup>nd</sup> applicant's right to property that was acquired as innocent purchaser for value without notice.

### **Determination**

9. We have considered the application, the grounds in support thereof, applicant's submissions, the authorities cited and the law. The jurisdiction under Rule 5(2)(b) of this Court's Rules is discretionary and guided by the interests of justice.
10. The principles for granting a stay of execution, injunction or stay of proceedings under Rule 5(2)(b) of this Court's Rules are well settled. This Court in the case of *Trust Bank Limited and Another v. Investech Bank Limited & 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...”
11. On the first principle, as to whether or not the appeal is arguable, we have to consider whether there is at least a single bona fide arguable ground that has been raised by the applicants in order to warrant ventilation before this Court. See: *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR where this Court described an arguable appeal in the following terms:

“vii) 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.

viii) 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.”
12. We have carefully considered the grounds set out in the motion and the draft memorandum of appeal. In our view, the appeal is arguable inter alia on the ground whether the High Court erred in law and fact by usurping the jurisdiction of the Environment and Land Court (ELC) in determining that the 2<sup>nd</sup> applicant was not a bona fide purchaser and did not have a good title worth protection under Article 40 of *the Constitution*. An arguable point is not necessarily one that must succeed, but merely one that is deserving of consideration by the Court. Without saying more lest we embarrass the bench that will be seized of the main appeal, we are satisfied that the appeal is arguable.



13. On the nugatory aspect, which is whether the appeal or intended appeal, should it succeed, would be rendered nugatory if we decline to grant the orders sought and the intended appeal succeeds, in *Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others* (supra) this Court stated that:
- “ix). The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling.
  - x). Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved”.
14. In determining whether or not an appeal will be rendered nugatory, the Court has to consider the conflicting claims of both parties and each case has to be determined on its merits. In the instant application, the applicants’ main contention is that the net effect of the impugned ruling is to disinherit the applicants. We find no material demonstrating irreparable loss as damages would serve as adequate compensation in the circumstances. As the 2<sup>nd</sup> applicant’s right to title is tied to the 1<sup>st</sup> applicant, we hold that he too will not suffer irreparable loss that cannot be compensated by an award of damages.
15. As the applicants are required to prove the existence of the two limbs of Rule 5 (2) (b) of this Court’s Rules, having failed to prove the nugatory aspect, the applicants have failed to meet the required threshold. In the circumstances, the application dated 20<sup>th</sup> December 2023 has no merit and is dismissed with no order as to costs.

**DATED AND DELIVERED AT NYERI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

**A. O. MUCHELULE**

.....

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

