



REPUBLIC OF KENYA



KENYA LAW
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**Morara & 3 others v Omayo (Environment and Land Appeal
E006 of 2025) [2026] KEELC 1555 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1555 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E006 OF 2025
DO OHUNGO, J
MARCH 18, 2026**

BETWEEN

**TERESA NYAMUTAI MORARA 1ST APPELLANT
WESLEY ANYONA ONYANDO 2ND APPELLANT
ZABLON MASIRAH MOTURI 3RD APPELLANT
LAND REGISTRAR NYAMIRA COUNTY 4TH APPELLANT
AND
PETER ONDARI OMAYO RESPONDENT**

*(Being an appeal from the judgment and decree of the Chief
Magistrate's Court at Nyamira (W K Chepseba, Chief Magistrate)
delivered on 27th March 2025 in Nyamira MCELC No. 31 of 2019)*

RULING

1. The background of this appeal is that through Amended Plaintiff amended on 26th February 2016, the Respondent sought judgment against the Appellants for:
 - A. A declaration that the parcels West Mugirango/Siamani/7391 formerly part of West Mugirango/Siamani/5124 situate within Nyamira town, Nyamira County and occupied by the Plaintiff falls within the entitlement of the Plaintiff as purchaser.
 - B. A declaration that the subdivision of the property West Mugirango/Siamani/7391 into West Mugirango/Siamani/7944 and 7945 is wrought with fraud, illegality and misrepresentation and the same incompetent.
 - C. An order of permanent injunction restraining the defendants herself, themselves, jointly and severally, their agents, employees or any person acting on their behalf by whatever name called



from entering, occupying, selling, offering for sale to any third party, interfering with a portion or parcel of land occupied by the Plaintiff registered as West Mugirango/Siamani/7391 and the subdivisions thereof West Mugirango/Siamani/7944 and West Mugirango/Siamani/7945.

- D. That the titles West Mugirango/Siamani/7944 and 7945 be recalled, cancelled and West Mugirango/Siamani/7391 be reinstated and restored for transfer to the name of the Plaintiff.
 - E. An order nullifying titles West Mugirango/Siamani/7944 and West Mugirango/Siamani/7945 and reinstatement of West Mugirango/Siamani/7931 for the purpose of the transfer and registration into the Plaintiff's name.
 - F. An order of specific performance of contract by the Defendant in form of actual transfer of the property West Mugirango/Siamani/7391 into the Plaintiff's name.
 - G. Any other relief this court deems fit to grant in the circumstances.
 - H. Costs of this suit.
2. Upon hearing the matter, the Subordinate Court (W K Chepseba, Chief Magistrate) delivered judgment on 27th March 2025. The Learned Magistrate concluded that what was before him was a clear case of fraud and that the Respondent had proved his case. Consequently, the Court entered judgment against the Appellants as prayed with costs and interest.
 3. Dissatisfied with the judgment and the decree, the Appellants filed this appeal on 14th May 2025 through Memorandum of Appeal dated 8th May 2025. Thereafter, they filed Notice of Motion dated 21st November 2025 which is the subject of this ruling.
 4. The application is brought under Order 42 rules 6(1), (2) and (6) of the Civil Procedure Rules, Sections 1A, 1B, 3A, 63E and 66 of the *Civil Procedure Act* and Sections 13 (7), 19 and 26 of the *Environment and Land Court Act*. The following orders are sought in the application:
 1. [Spent]
 2. [Spent]
 3. The Honourable court be pleased to grant an interim, order of stay of execution of the judgment, order or decree delivered by the trial magistrate on the 27th day of March 2025 in the lower Court ELC case No. 31 of 2019 pending the hearing and determination of the herein Appeal. No. E006 of 2025.
 4. Such further orders be made as the Hon Court may deem fit and expedient.
 5. Costs of this application be provided for.
 5. The application is based on the grounds listed on its face and is supported by an affidavit sworn by Zablon Masirah Moturi, the Third Appellant. He deposed that the Respondent could evict the Appellants, alienate, subdivide, sell or charge the suit property to render the appeal nugatory. That if the Respondent executes the judgment by evicting them, the appeal would be rendered nugatory and a mere academic exercise. He added that the Appellants would suffer irreparable loss and damage unless the application was allowed.
 6. The Respondent opposed the application through a replying affidavit which he swore on 28th November 2025. He deposed that there was no competent appeal on record since the appeal was filed on 14th May 2025 which was clearly out of time and without leave. That in the absence of a valid appeal, this Court lacked jurisdiction to entertain the application.



7. The application and the issue of validity of the appeal were canvassed through written submissions. The Appellants filed submissions dated 5th December 2025 while the Respondent filed submissions dated 28th November 2025.
8. The Appellants/Applicants submitted that the appeal had been filed within time and that the Respondent had included holidays and weekends in his computation of time contrary to Rule 3 of the Court of Appeal Rules, 2010. That having excluded holidays, the last day of filing the appeal fell on 15th May 2025 and that the appeal was filed within time. Relying on the case of *MSA v KMKA* [2024] KECA 1222 (KLR), they urged the Court to find that the appeal was filed on time and to allow the application.
9. On the part of the Respondent, it was submitted that pursuant to Section 79G of the *Civil Procedure Act*, appeal was to be filed within thirty days of the judgment and that the deadline for its filing was on 28th April 2025. That the appeal was filed on 14th May 2025 which was about 17 days outside the statutory period.
10. It was further submitted that the Appellants neither sought nor obtained extension of time and that the appeal was defective and incapable of sustaining the application. Relying on the case of *West Kenya Sugar Co Ltd v Angulu* [2024] KEELRC 1698 (KLR), submitted that the appeal was incurably defective. In conclusion, the Respondent urged the Court to dismiss the application with cost.
11. I have carefully considered the application, the affidavits and the submissions. The issues that arise for determination are whether the appeal was filed on time, whether stay of execution pending appeal should issue and who bears costs?
12. This is an appeal against a judgment delivered by the Subordinate Court in exercise of its environment and land jurisdiction as conferred by Section 26 (3) and (4) of the *Environment and Land Court Act* and Section 9 (a) of the *Magistrates' Courts Act*, 2015. Appeals from such decisions are governed by the *Environment and Land Court Act* and not the Court of Appeal Rules, 2010.
13. Pursuant to Section 16A (1) of the *Environment and Land Court Act*, 2011, an appeal from the Subordinate Court to this court is to be filed within 30 days of delivery of the judgment or ruling. The judgment herein was delivered on 27th March 2025. Any appeal against it was to be filed by 26th April 2025. Having been filed on 14th May 2025, and without leave or extension of time, this appeal is undoubtedly invalid until regularised. An invalid appeal cannot be a basis for granting stay pending appeal. I find no merit in Notice of Motion dated 21st November 2025.
14. It is important to note that Section 16A (2) of the *Environment and Land Court Act* gives this Court jurisdiction to admit an appeal out of time if the Appellant satisfies the Court that he had a good and sufficient cause for not filing it in time. None of the parties herein have asked the Court to strike out the appeal for being filed late. All that the Respondent has urged is that the application be dismissed. In those circumstances, in the interest of justice, I will give the Appellants an opportunity to seek to regularise the appeal.
15. In view of the foregoing discourse, I make the following orders:
 - a. Notice of Motion dated 21st November 2025 is dismissed with costs to the Respondent.
 - b. The Appellants to file and serve, within Fourteen (14) days from the date of delivery of this ruling, an application seeking admission of this appeal out of time.
 - c. In default of the Appellants complying with (b) above, this appeal shall stand struck out with costs to the Respondent.



DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 18TH DAY OF MARCH 2026.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No Appearance for the Appellants

Ms Nyaboke holding brief for Mr Nyambega for the Respondent

Court Assistant: B Kerubo

