



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELC NO 47 OF 2017**

**GABRIEL MACHARIA NJOROGE**(Suing as the personal representative  
of the estate of Anjelo Kanyuanjohi Macharia (Deceased) .....**PLAINTIFF/APPLICANT**  
**VERSUS**

**LAND REGISTRAR** .....**1<sup>ST</sup> DEFENDANT/ RESPONDENT**

**LYDIAH NJOKI MAGUTA** (being sued as the legal and  
Personal representative of the estate of the late  
**TIRUS NYINGI NGAHU**).....**2<sup>ND</sup> DEFENDANT/RESPONDENT**

**STACY WAMBUI NYINGI** (being sued as the legal and  
Personal representative of the estate of the late  
**TIRUS NYINGI NGAHU**).....**3<sup>RD</sup> DEFENDANT/RESPONDENT**

## RULING

(1) This ruling is on the notice of motion dated 26-8-2025. The motion which is by the Plaintiff is brought under **Sections 3A and 63(c) and (e)** of the **Civil Procedure Act, Order 42 rule 6(1) and 43** of the **Civil Procedure Rules 2010** and all other enabling provisions of the law and powers of the Court. The motion seeks two residual prayers.

**4. Stay of execution of the certificate of costs in this case dated 26/7/2024 pending the hearing and determination of the appeal in Nyeri Court of Appeal E044 of 2023.**

**5. That the costs of this application be in the cause.**

(2) The motion is based on three (3) grounds and is supported by the affidavit of the Plaintiff dated 26-8-2025. The gist of the grounds and the affidavit is as follows. One, the order of stay of execution pending appeal in this case is now spent following the delivery of judgment of 23-2-2023. Secondly, the Plaintiff has a strong appeal with a high likelihood of success and the status quo ought to be maintained. Finally, the pending appeal will be rendered

nugatory if execution proceeds and the right to a fair hearing guaranteed to the Plaintiff under **Article 50(1)** of the Constitution will have been violated.

(3) The motion is opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants whose counsel has filed a notice of preliminary objection dated 23-10-2025. It states as follows.

1. **“This court lacks jurisdiction to grant the orders sought in the motion dated 26-8-2025 by dint of Order 42 rule 6(4) of the Civil Procedure Rule as read together with rule 11(3) of the Advocates Remuneration Order of 2009 as no notice of appeal has been filed against the taxed costs in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the matter.**
2. **That without a notice of appeal filed by the Plaintiff against the foresaid taxed costs, this court cannot assume jurisdiction and issue orders sought in the Plaintiff’s application dated 26-8-2025 in vacuo.**

In addition to the preliminary objection, the affidavit by Davis Mulani is to the following effect. Firstly, the Plaintiff has not taken any steps to prosecute his appeal but has instead filed two other suits at Kangema SPM’s Court. Secondly, the Plaintiff has failed to prove that he stands to suffer substantial loss.

(4) I have carefully considered the motion in its entirety including the affidavits, the annexures, the preliminary objection and the entire record. I find that the following issues arise.

- (i) **Whether an application for stay of execution under Order 42 is dependent upon the proceedings provided for under Order 11 of the Advocates Remuneration order.**
- (ii) **Whether a notice of appeal ought to have been filed before the court can assume jurisdiction under Order 42 of the Civil Procedure Rules.**
- (iii) **Whether substantial loss has been proved by the Plaintiff to warrant the order of stay of execution.**

(5) Regarding the first issue, I find that an order for stay of execution can be granted irrespective of any reference having been filed in respect of taxed costs. If there is no reference, it would mean that the Appellant is not disputing the amount of costs awarded but since there is a pending appeal, that appeal forms the substratum of his cause of action such that if it succeeds, then the costs too would abide the outcome of the appeal.

The current application is therefore not dependent on the existence or otherwise of a reference on the taxed costs.

(6) As for the second issue, I find that it is closely tied the first issue and no notice of appeal ought to have been filed for the Court to assume jurisdiction under the law, particularly **Order 42** of the **Civil Procedure Rules**.

(7) In an earlier application for injunction, this court said as follows.

**“ If the said appeal were to succeed, it would mean that the entire decree of this court could be set aside...”**

This finding is true today in the same way it was on 22-7-2025. Having allowed an application for injunction on 22-7-2025, it is only fair and just that I allow the current motion because the Respondents have nothing to lose. They are in occupation of the suit land and it is the Plaintiff who has nothing to show for his litigation other than the escalating costs which he will have to pay if he eventually loses appeal No. E044 of 2023 at the Court of Appeal in Nyeri.

(8) For the above stated reasons, I allow the motion dated 26-8-2025 in terms of **prayer 4**.  
Costs in the cause.

**It is so ordered.**

**Dated, Signed and Delivered virtually at Murang'a this 23<sup>rd</sup> day of March, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of: -**  
**Court Assistant – Magu**  
**Plaintiff's Advocate –Mr. Ndungu**  
**2<sup>nd</sup> and 3<sup>rd</sup> Defendant's Advocate – Mr. Onyancha**