



REPUBLIC OF KENYA



**Samuria & 6 others v Kima & 16 others (Environment and Land Case
E024 of 2025) [2026] KEELC 1647 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1647 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND CASE E024 OF 2025**

MN MWANYALE, J

MARCH 24, 2026

BETWEEN

PARSIAT OLE SAMURIA 1ST PLAINTIFF
SEMEYIOI OLE KISILU 2ND PLAINTIFF
JONATHAN NTORROR 3RD PLAINTIFF
YOHANA SARUNI NAIROYUA 4TH PLAINTIFF
MOSES OLOISIRIRI KIMEEI 5TH PLAINTIFF
LEONARD TAMPUSHI LESWAM 6TH PLAINTIFF
STEPHEN KISEREMA OLE SALATON 7TH PLAINTIFF

AND

JULIUS KIMA 1ST DEFENDANT
JOHN OLE MATA KIMA 2ND DEFENDANT
JAMES KIMA 3RD DEFENDANT
PAANOI KIMA 4TH DEFENDANT
MOSES KIMA 5TH DEFENDANT
DANIEL MPAPA KARRI 6TH DEFENDANT
SAMWEL KIMA 7TH DEFENDANT
ARAMI KIMA 8TH DEFENDANT
STEPHEN KILISU 9TH DEFENDANT
OLOISHURU KIMA 10TH DEFENDANT
TAPAIYO KIMA 11TH DEFENDANT



KINANG'ORE KAPUNET	12 TH DEFENDANT
LEPARAN KARI	13 TH DEFENDANT
EMMILY ENE DANIEL KARRI	14 TH DEFENDANT
GEORGE OLE KIMA	15 TH DEFENDANT
NGATAT KAPUNE	16 TH DEFENDANT
SAMSON LEKOKWA KARRI	17 TH DEFENDANT

RULING

1. The Application dated 13.03.2026 seeking leave of this court to lodge an appeal against the Ruling delivered on 9th of March 2026 is the one subject of this Ruling.
2. The Application is premised on Order 43 Rule 1(3) of the *Civil Procedure Act* and Section 75 of the *Civil Procedure Act*.
3. The Applicant additionally sought for stay of execution orders against the Ruling dated 9th of March 2026.
4. In support of the Application the grounds premised thereof are that; -
 - i. At the time of delivery of the Ruling, the Advocate for Respondent now Applicant did not hear the whole Ruling in its entirety as he had connectivity issues, and the Applicants being dissatisfied with the Ruling are now seeking leave to appeal, and their Advocate did not seek the leave to appeal, contemptuously with the delivery of the Ruling.
 - ii. An affidavit in support of the Application sworn by the Advocate reiterates the grounds in support of the Application.
 - iii. A replying affidavit by the Respondent was filed in which he depones interalia
 - i. The Applicant did not need to seek leave as the Ruling dated 9th March 2026 did not fall within the confines of Order 43 Rule 1(1)
 - ii. That the Applicant has not filed any grounds in support of the stay of execution application guided by Order 42 Rule 6 and has not satisfied the conditions set therein.
 - iii. That the Notice of Appeal filed in any event is defective having been filed under Rule 75 of the Court of Appeal Rules instead of Rule 77 of the Court of Appeal Rules hence there is no pending Appeal.
5. The Application was argued orally, Mr. Mwita Nyangi for Defenant/Applicant who submitted that the Application met the threshold of grant of leave to appeal having been filed within 7 days of delivery of Ruling while it ought to have been filed within 14 days in any event hence met the threshold of both Section 75 of the *Civil Procedure Act* as well as Order 43(1) (3) of Civil Procedure Rules.
6. In Response, Mr. Kiprotich Learned Counsel for the Plaintiff/sRespondents submitted and placed reliance on the Replying affidavit.



7. He submitted that the Applicant did not need to seek leave to appeal in respect of an injunction application and that there were no grounds to support the stay of execution prayers where the conditions for the stay of execution had not been met in any event.
8. Mr. Nyangi submitted that the court issued eviction orders as opposed to injunction prayer hence he required leave to appeal.
9. The only issue for determination is whether the Application is merited.
10. Indeed, Order 43 Rule 1(3) allows for Application to be made for leave to appeal where they are outside the list indicated under provisions of Order 43 Rule 1(1).
11. On 9th of March 2026, when the court delivered its Ruling it allowed the injunction prayed for at prayers 3 and 4 of the Application, in respect of these orders, the Applicant had an automatic right of Appeal. The court also issued eviction orders of the Applicants having found their entry was unjustifiable having entered on the suit land on the basis of a judgment that had been set aside, and in respect of this order the Applicant had to seek leave to appeal and he sought in this Application.
12. With respect to the stay of execution orders, the same were sought in vacuum, no grounds in support for the prayers, no depositions to support the same, and the same having not met the threshold of Order 42 Rule 6, the prayer for stay of execution is hereby denied.
13. In a nutshell, the Application is partly allowed, in terms that leave to appeal is hereby granted but the prayer for stay of execution is denied and dismissed.
14. Costs of the application are granted to the Respondent.

DATED AT KILGORIS THIS 24TH DAY OF MARCH, 2026

HON. M.N. MWANYALE

JUDGE

In the presence of

CA – Sylvia/Sandra

Mr. Kiprotich for Plaintiff/Respondent

N/A for Mr. Mwita Nyangi for the Defendant/Applicant

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