



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
MISCELLANEOUS APPLICATION NO E327 OF 2025

NATALIE NJOKI CHARLES..... 1ST
APPLICANT

MARY MASHAVU (suing in their capacity as the guardian
Ad litem of Cecilia Mou Charles Harris.....2ND
APPLICANT

-VERSUS-

ROSE WAMBUI KAMAU.....1ST
RESPONDENT

JUDY WAIRIMU KAMAU.....2ND
RESPONDENT

JULIUS KARUGA MACAHARIA.....3RD
RESPONDENT

RULING

Background

1. The applicant has filed a notice of motion application dated 24th October 2024 seeking for the following orders
 - a) Spent
 - b) Spent
 - c) THAT this Honourable Court be pleased to cancel and/or declare null and void the Eviction Notice over Title No: Nairobi/Block 91/399 - Gigiri served on 18 August 2025 and

dated 29 July 2025 issued by Kipkenda & Company Advocates on behalf of the Respondents.

d) THAT this Honourable Court do issue such further orders as it may deem just and fit for the ends of justice.

e) THAT the costs of this application be in the cause.

2. The application is on the following grounds as in the supporting affidavit of Mary Mashavu the 2nd Applicant. She deponed in her capacity as the guardian ad litem of Cecilia Mou Charles Harris who was of unsound mind. She deponed that there was a judgment HCC No 337 of 2010 Rose Wambui Kamau, Judy Wairimu Kamau, Julius Karuga Macharia Vs Natalie Njoki Charles and Mary Mashavu, the parties herein which matter was heard and determined in the judgement dated 22nd June 2017 which judgement ordered for specific performance in that the respondents were to pay the balance of the purchase price as captured in the agreement for sale dated 5th August 2017. She deponed they had filed a notice of appeal and an application dated 4th August 2017 seeking leave to appeal which is still pending. She further deponed that the respondents went ahead to issue an eviction notice dated 29th July 2025 despite adhering to the terms of the judgment. That having failed to pay up the balance of the purchase price, the respondents had no equitable title to warrant issuance of the eviction notice of Ms Cecilia Mou Harris.

3. She further deponed that Ms Cecilia is mentally incapacitated and should the eviction happen it would occasion irreparable harm to

her hence this application to cancel the eviction notice and declare it null and void.

Respondents Reply

4. The application was opposed via the replying affidavit sworn by Johnson Kamau Mangucia dated 10th November 2025. He deponed that the applicants were trying to renegotiate terms of the agreement that Miss Cecilia had entered into with the respondents willingly. That further there was a pending application in the high court HCC 327 of 2025 that is yet to be determined and the filing of this application amounts to forum shopping
5. He deponed that the respondents have and are willing to pay up the balance price as ordered in the judgement and have severally communicated to the applicant the same, but the applicants have frustrated the process by failing to give which account the funds should be released to and instead chose to come to court seeking to appeal the judgment and alleging non-payment of the balance price.

Applicant 'submissions

6. The applicants filed submissions date 15th December 2025 and submitted on the following major issues being;
 - i. Whether the eviction can lawfully issue where judgement was for a specific performance and the respondents are in breach
7. The applicants submitted that the judgment of 22nd June 2017 gave orders as to specific performance where the respondents were to pay the balance of the purchase price and having failed to do the same could not issue an eviction notice based of the same judgment

relying on the case of **Alice Njoki Mugo Vs KCB Bank. Limited & Another 2022 KEHC 1097 (KLR)**

8. They submitted that what they were not disputing the willingness of the respondents to pay the balance rather the legality of the judgment which was issued by a court without jurisdiction hence cannot complete a transaction that was based on what they consider an irregular judgement. That having submitted as such the eviction notice was irregular.

ii. Whether the eviction is premature pending the application for leave and stay

The applicants indicated that they had file a notice of appeal intending to appeal the ruling dated 24th July 2025. That there being a pending appeal, the eviction if allowed would cause the application for leave and stay to be rendered an academic process

iii. Whether the applicants are entitled to the reliefs sought.

9. Counsel submitted that having demonstrated that Cecilia was of unsound mind the eviction would cause her irreparable harm as it would tamper with her emotional well-being and further occasion her to loss her property.

As at the time of drafting this ruling, the respondents had not filed their submissions.

Analysis and Determination

10. Having looked at the application, the rebuttal from the respondents and the submissions the only issues for determination is whether the applicants are entitled the orders sought

The applicant's contention as indicated in their pleadings is that the respondent was only directed by the judgement of 22nd June 2017 to pay the balance price but failed to honour their said obligation as in the sale agreement dated 5th August 2009 and therefore the completion of the said transaction did not happen and as such, respondents never acquired title and therefore had no rights to issue an eviction to the applicants

The respondent in rebuttal indicated that they have been willing all through to pay the purchase balance but have been frustrated by the applicants evidenced by correspondences attached to their replying affidavit.

In their submissions at page 7 paragraph 2 the applicants actually admit the willingness of the respondents to pay the balance price but indicate that their issue is on the legality and enforceability of said judgement since it was obtained from a court of lack of jurisdiction making it judgment irregular. This therefore implies that compliance by the respondents is a non-issue as admitted by the applicants. The respondents have and are still willing to comply to pay the balance price but have not been able to due to hindrances brought forth by the applicants

The court at this point will then move on to the issue of whether the judgement was irregular being that it was issued with a court of incompetent jurisdiction.

The ruling the applicants seek to appeal is dated 25th July 2025 which ruling has not been attached by the applicants for the court to

peruse nonetheless from the applicant's supporting affidavit the application that gave rise to the ruling, sought to have the judgement set aside on grounds that the court lacked jurisdiction to entertain the suit. The application was dismissed by the court. The issue of jurisdiction had been dealt with in the said ruling when the court dismissed the application. The ruling still stands to be in place despite there being a notice of appeal and application seeking leave to appeal.

It is trite law that an appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order stay of execution are provided for under Order 42 Rule 6(2) Civil Procedure Rules. Order 42 Rule 6 of the Civil Procedure Rules stipulates:

6. (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

It is trite law that execution is a lawful process and it is not a ground for granting stay of execution. The applicant is required to show that execution shall irreparably affect them or will alter the status quo to its detriment therefore rendering the appeal nugatory. In the instant case, the applicants state that Cecilia Mou Charles Hassan stands to be rendered destitute as the respondents will evict her from the suit land. I don't see how irreparable harm will be occasioned to the applicant as she has family who are the very representatives in this case who can stay with her. Besides allowing the eviction also means that the respondents will be settling the balance price in the sum of Ksh 30,750,000 that can comfortably be used by the applicants to settle on another property.

On the issue of appeal being rendered nugatory, the applicants have not provided enough evidence to show how their appeal stands a high chance of success which then will render the entire appeal an academic exercise.

It would be prejudicial to the respondents to deny them carry out execution of the judgment and allow the applicants in possession yet there is a binding agreement that was upheld by the court which would mean the respondents take possession.

The respondents having established their willingness to pay up the balance price, and have indicated good will on their part to be bound by the sale agreement, the applicants on the other hand the same cannot be said for them.

As highlighted by the respondents and I tend to agree, the applicants are seeking to renegotiate the agreement or find a way out of the same in total breach of the terms notwithstanding that the vendor is now not mentally stable and probably has no clue what is going on so the question that follows is whose interest are the applicants safeguarding?

Having submitted as above I hold that the parties are still bound by the sale agreement dated 6th August 2009 and the court cannot go ahead and rewrite a contract for the parties. This was captured in the case of In **National Bank of Kenya Ltd V Pipeplastic Samkolit (K) Ltd & Another [2001] KECA 362 (KLR)** the Court of Appeal held as follows: *“A court of law cannot re-write a contract between parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.*

Final disposition

For the foregoing reasons, I order as follows

- i. That the application dated 24th October 2025 lacks merit and hereby dismissed
- ii. The Respondents are to adhere to the terms of the Judgement dated 22nd June 2017 and pay up the balance of the purchase price in the sum of Ksh 30, 750,000/=.
- iii. Upon satisfying the condition above the Applicants are to give vacant possession of the suit property Land title No

Nairobi/Block/91/399 to the respondents' failure to which eviction orders will issue.

iv. Cost of the application to be awarded to the respondents.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **23rd** day of

March, 2026.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Ms. Muyai..... for the Applicants

Mr. Odoyo..... for the Respondents

Philomena W..... Court Assistant