



Kamonde & 3 others v Lumumba & 6 others (Land Case Appeal E038 of 2025) [2026] KEELC 1794 (KLR) (25 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1794 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
LAND CASE APPEAL E038 OF 2025
NA MATHEKA, J
MARCH 25, 2026**

BETWEEN

**JOHN KAMONDE 1ST APPELLANT
JOHN WAMBUA 2ND APPELLANT
JACKLINE M PETER 3RD APPELLANT
VERONICA A KOMUTHO 4TH APPELLANT**

AND

**PATRICK LUMUMBA 1ST RESPONDENT
VINCENT AWARE 2ND RESPONDENT
HENRY KISINGU 3RD RESPONDENT
PETER KURIA 4TH RESPONDENT
MICHAEL KIARIE 5TH RESPONDENT
SILVANCE OCHIENG 6TH RESPONDENT
STEPHEN NAMENDA 7TH RESPONDENT**

RULING

1. The application is dated 7th July 2025 and is brought under Article 165(6), 159(2)(d) of *the Constitution*, Section 13 *Environment and Land Court Act*, Section 79 G,1A,1B,3A of the *Civil Procedure Act* and Order 42 Rules 1,2,6 & 13 of the Civil Procedure Rules seeking the following orders;

1. That this Honourable Court be pleased to admit and hear this appeal against the ruling delivered on 2nd July 2025 in Mavoko CM ELC No. E030 of 2025.



2. That this Honourable Court be pleased to order stay of execution of the Ruling/Orders resulting from the Ruling delivered on 2nd July 2025 in Mavoko CM ELC No. E030 of 2025 pending the hearing and determination of the appeal.
 3. That the Honourable Court be pleased to direct the Chief Magistrates Court at Mavoko to transmit the original lower court file, including the proceedings, pleadings, exhibits, annexures and ruling to this Court.
 4. That the Honourable Court be pleased to issue an order staying further proceedings in Mavoko CM ELC No. E030 of 2025 pending the hearing and determination of this appeal.
 5. That the costs of this Application be in the cause.
2. It is based on the following grounds that the trial Magistrate in Mavoko CM ELC No. E030 of 2025 issued injunctive orders over alleged public land, yet lacked jurisdiction under section 13 of the *Environment and Land Court Act*. The continued proceedings before the subordinate court pose a real risk of judicial overreach, violation of the Applicants' proprietary rights under Article 40 of *the constitution*, and irregular enforcement of ultra vires orders. The matter concerns a question of jurisdiction, which is conferred strictly by statute and *the Constitution* and cannot be assumed or implied. If proceedings are not stayed, and the injunctive orders lifted, the Applicants may suffer irreparable harm, including loss of access, occupation, and rights over private property. It is in the interest of justice that the record of appeal be called up and proceedings stayed pending full hearing.
 3. The 1st to 7th Respondents stated in their grounds of opposition that the application is meant to delay the matter as the trial court does have jurisdiction to entertain the matter. That the Applicants have not shown any willingness to furnish security for due performance and for the benefit of the stay of execution should the court be inclined to grant the same.
 4. I have considered the application, grounds of opposition and submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the Civil Procedure Rules as follows;

“No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 an application being made, to consider such application and to make such orders thereon as may to it seem just, 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 the orders set aside.”
 5. Order 42, rule 6 states:

“No order for stay of execution shall be made under sub-rule (1) unless:-

 - a. The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and



- b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
6. The appellants need to satisfy the Court on the following conditions before they can be granted the stay orders:
1. Substantial loss may result to the applicant unless the order is made.
 2. The application has been made without unreasonable delay, and
 3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.
7. The principles governing the exercise of the court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of *Reliance Bank Ltd (In Liquidation) vs Norlake Investments Ltd – Civil Appl. No. Nai. 93/02 (UR)*, thus;
8. Hitherto, this Court has consistently maintained that for an application under rule 5(2) (b) to succeed, the applicant must satisfy the court on two matters, namely:-
1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
 2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”
9. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange vs Richard Nyagaka Tongi & 2 Others* eKLR where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;
- The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”
10. In the case of *Mohamed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat (2013)* eKLR, the court stated that;
- That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right
11. We are further guided by the court’s decision in *Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others* Civil Appeal No. 291 of 1997, at Page 4 as follows:
- . . . the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . .the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant



must furnish security, and the application must, of course, be made without unreasonable delay.”

12. I find that the applicant is not guilty of laches as judgement was delivered on 2nd July 2025 and this application is dated 7th July 2025. The Applicant submitted that the trial Magistrate in Mavoko CM ELC No. E030 of 2025 issued injunctive orders over alleged public land, yet lacked jurisdiction under section 13 of the *Environment and Land Court Act*. The matter concerns a question of jurisdiction, which is conferred strictly by statute and *the Constitution* and cannot be assumed or implied. If proceedings are not stayed, and the injunctive orders lifted, the Applicants may suffer irreparable harm, including loss of access, occupation, and rights over private property.
13. I find that the grounds of appeal raised in the application do raise an arguable appeal and I find that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. I find that the applicant has fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is merited and I order that the status quo be maintained pending the hearing and determination of the appeal. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF MARCH 2026.

N.A. MATHEKA

JUDGE

