



**Kariuki v Waichuhi (Environment and Land Appeal E237 of 2025)
[2026] KEELC 1787 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1787 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E237 OF 2025**

**JG KEMEI, J
MARCH 19, 2026**

BETWEEN

LUCY WANJIKU KARIUKI APPELLANT

AND

MOSES KAMAU WAICHUHI RESPONDENT

RULING

1. The Appellant/Applicant filed this application dated 7/11/2025 seeking the following orders: that the court issue a temporary injunction restraining the Respondent, their legal representatives, and agents from transferring, selling, changing ownership records, constructing, or undertaking any further development or dealing with parcels C-236 – Kayole Matopeni Squatters & police station scheme pending the hearing and determination of the application and/or appeal; and that the Court set aside or revise the ruling of 24/10/25 pending the hearing and determination of the application; that the Court Order the status quo in respect of parcel C-236 Kayole Matopeni Squatters police station resettlement scheme—that there shall be no further construction or development by either the appellant or the Respondent in respect to C-236; that there shall be no eviction of any party from the said suit land; that there shall be no charging, selling, alienating, or transferring of the property pending the hearing and determination of the appeal; and that the status quo remain in force pending the hearing and determination of the suit in the Lower Court.
2. The application is based on the ground annexed hereto and the supporting affidavit of Lucy Wanjiku Kariuki, sworn on 7/11/2025. She deposes that the Respondent filed a suit and an application in the trial court on 4/11/2020, but failed to serve her; she learned of their existence on 5/2/2021 and instructed Counsel to come on record. The said Counsel applied to the Court for an Order to file the defence out of time, which was granted. The defence was duly filed. However, on 10/11/2020, she withdrew instructions from the said Counsel and appointed another. However, on 13/3/2025, she was shocked to learn that her house was being demolished pursuant to ex parte orders issued by the



Court in the judgment. She moved the Court on 25/3/25 to set aside the ex parte judgment, amended the defence, and recalled the Respondents' witnesses who had earlier testified.

3. The Court determined the application and dismissed it, leading to the current appeal. That as it stands, nothing prevents the Respondent from disposing of the suit land to her detriment before her appeal is heard and decided, which could cause her to suffer loss and irreparable damage. It is also shown that her appeal has a strong likelihood of success, as outlined in the grounds of appeal within the memorandum of appeal before the Court. The Court was urged, in the interest of justice, to preserve the suit land so as not to render her appeal meaningless and purely academic.
4. The Respondent opposes the application through the replying affidavit sworn on 20/11/2025. The deponent asserts that the application is both incompetent and misconceived, as the Appellant has failed to disclose that the judgment was rendered on 30/8/24, declaring the Respondent the sole proprietor of the suit land. Following the delivery of the judgment, the Respondent executed the same by demolishing the building on the site, thereby maintaining the existing status quo whereby the Respondent is in possession of the suit land. There is no evidence provided by the Appellant to demonstrate any further disposal of the suit land; thus, the allegation is deemed merely idle and speculative. Additionally, no orders have been issued to stay execution of the judgment dated 30/8/24 or the resulting decree. Consequently, the judgment remains in force.
5. Furthermore, despite the orders of interim relief, there exists a valid and regular judgment indicating that the Appellant is attempting to indirectly suspend. Additionally, there is no demonstrable or arguable appeal in this matter. The Appellant has not demonstrated any prejudice should the said application be denied.
6. I have considered the written submissions of the parties on record.
7. The key issue before the court is whether the application is justified. It is not disputed that the current situation is as declared in the Court's judgment issued on 30/8/24, namely that the Respondent is in possession of the suit land.
8. It is also not in dispute that the appeal arises from the Ruling of the Honourable Trial Court, which dismissed the application to set aside the ex parte judgment.
9. Order 40 of the Civil Procedure Rules provides as follows;

Order 40. rule 1] Cases in which temporary injunction may be granted. 1. Where in any suit it is proved by affidavit or otherwise— (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or y g wrongfully sold in execution of a decree; or (b) that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders. [Order 40, rule 2.] Injunction to restrain breach of contract or other injury. 2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the Plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the Defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.



10. To enable the court to determine the disputes between the parties, it is just and proper that the status quo be maintained in the following terms;
- a. The Respondent is in possession of the suit land as per the ex parte judgment delivered on 30/8/25.
 - b. The Respondent, his agents and servants are hereby restrained from selling, transferring, charging, or constructing any new buildings on the suit land for a period of 120 days, within which the Appellant is expected to have filed the record of appeal and prosecuted this appeal to its logical conclusion. In default, the orders granted herein shall lapse automatically.
 - c. The costs of the application shall be borne by the Appellant /Applicant
11. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

Mr Amati for the Appellant

Mr Kariuki for the Respondent

C/A - Ms Yvette Njoroge

