



Mwaura v Equity Bank Limited & 4 others (Environment and Land Appeal 70 of 2023) [2026] KEELC 1835 (KLR) (26 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL 70 OF 2023**

**JM KAMAU, J
MARCH 26, 2026**

BETWEEN

STANLEY KARANJA MWAURA APPELLANT

AND

EQUITY BANK LIMITED 1ST RESPONDENT

**JOSEPH KARIUKI T/A JOSRICK MERCHANTS INSURANCE 2ND
RESPONDENT**

CRISTINE MUMBI GICHORA 3RD RESPONDENT

THE LAND REGISTRAR NYANDARUA 4TH RESPONDENT

AND

DIGIT AUCTIONEERS INTENDED RESPONDENT

RULING

1. In the Application dated 22/9/2025, the Applicant urges the Court to grant him the following orders: -
 - a. Already spent.
 - b. That the Court be pleased to order that Digit Auctioneers be included as the 5th Respondent for purposes of this Application.
 - c. Stay of execution of the Judgment of Engineer CMCC No. ELC 13 of 2019 dated 18/7/2023 and any other subsequent Orders therefrom.
 - d. Pending the Hearing of the intended Appeal, stay of the sale of parcel No. Nyandarua/Githioro/1756 by 1st to 3rd Respondents which the said 1st to 3rd and the intended 5th Respondent are preparing to re-advertise for sale by public auction and by any other process



after the sale of 7/5/2025 (now past by the time of filing the said Application on 22/9/2025) failed to go through.

- e. Stay of the sale of Nyandarua/Githioro/1756 and execution of Judgment/ Decree of C.M Engineer ELC No. 13 of 2019 pending the Hearing and determination of Nyandarua ELC Appeal No. 70 of 2023 (formerly Nyahururu ELCA No. 3 OF 2023) and/or until such further and appropriate period that this Court may find fit to grant.
 - f. Costs.
2. The Grounds upon which the Application is based are that the 1st Respondent through Digit Auctioneers had advertised land parcel Nyandarua/Githioro/1756 for sale on 7/5/2025 by public Auction but which did not go through and the said Respondents are now making further arrangements to have the said parcel of land registered in the name of the 3rd Respondent sold either by public auction or by any other process which was a subject of Engineer CMELC No. 13 of 2019 and a Decision made vide Judgment dated 15/7/2023.
 3. The Applicant further depones that he was to guarantee the 2nd Respondent for a loan that was being advanced to her by the 1st Respondent in 2015.
 4. The Decision of Engineer CMELC No. 13 of 2019 is now the subject of Appeal in this case.
 5. The Applicant further depones that the suit land herein is where he and his family reside and have so lived for over 45 years now and that should the Orders sought not be granted, this Appeal would be rendered nugatory and would just be rendered a mere academic exercise and the loss incurred would be so serious and irreparable.
 6. As is now common and a song that is so popular among all Applicants, it is averred herein that the Orders sought herein would not prejudice the Respondent in any way. The Applicant claims that the 3rd Respondent was given a loan by the 1st Respondent with Title documents in respect of his land after falsification of documents by the 3rd Respondent. The Applicant depones that why he has come to Court late in the day is that when the Notice of Sale was served upon a family member who did not understand the implication of the Notice, he was away from home.

He finally depones that it is in the interest of justice that the prayers sought be granted.

7. In her grounds of opposition dated 16/10/2025 against the Appellant's Application, the 1st Respondent states that the Application dated 22/9/2025 lacks merit, that the Appellant has failed to meet the requirements of Order 42 Rule 6 (2) of the Civil Procedure Rules as he has failed to demonstrate that he would suffer substantial loss should the prayers not be granted and that the 1st Respondent is suffering substantial loss having charged Title No. Nyandarua/ Githioro/ 1756 to advance a loan to the 3rd Respondent which loan remains unpaid and should therefore be allowed to enjoy the fruits of the Judgment and that this Application was not made without unreasonable delay and the Applicant is guilty of laches of more than 2 years.

The other Respondents did not respond to the Application.

8. To start with, the suit in Engineer CMELC No. 13 of 2019 which Judgment is being challenged and which was delivered on 18/7/2023 was filed by the Appellant herein on 10/4/2019 for the following orders: -
 - a. A Declaration that any charge document purportedly held by the 1st Defendant (1st Respondent herein) over the Title No. Nyandarua/Githioro/1756 is null and void.



- b. A Declaration that the Plaintiff (the Appellant herein) is the rightful and legal owner of Nyandarua/Githioro/1756.
 - c. A Permanent Injunction restraining the Defendants (Respondents), their agents, servants, employees or any other person from selling, disposing of, trespassing, attaching, auctioneering or in any other way dealing with Title No. Nyandarua/Githioro/1756.
 - d. Costs of the suit.
 - e. Interest on (c) above at Court rates.
 - f. Any other or further relief that the Court may deem fit to grant.
9. In the Judgment delivered by the Honourable H.O. Barasa on 18/7/2023, the learned trial Magistrate observed that the suit land was lawfully transferred to the 3rd Defendant (Respondent) which she used to apply for a loan from the 1st Defendant (1st Respondent).
 10. The Plaintiff (Appellant) and 3rd Defendant (3rd Respondent) wanted money from the 1st Defendant (1st Respondent) and they agreed to charge the suit land to the 1st Respondent and that is how and why the land was charged with the Bank (1st Respondent).
 11. The Court concluded that the sale and transfer of the suit land Nyandarua/Githioro/1756 to the 3rd Defendant (3rd Respondent) was by design and intent between the 2 parties and not by fraud. It was voluntary and therefore lawful and that the Plaintiff's (Appellant's) intention may have been to save himself (the Appellant) from debt and later buy back the land but the fact remains that he voluntarily and knowingly transferred the land to the 3rd Defendant (3rd Respondent).
 12. He therefore in conclusion found that the Plaintiff (Appellant) failed to prove his case on a balance of probabilities and to persuade the Court that he was entitled to any of the prayers sought and his claim failed in its entirety. The suit was accordingly dismissed. Each party was ordered to bear its own costs.
This is what I am urged to stay.
 13. On the issue of adding Digit Auctioneers as 5th Respondent, it is too late in the day and equally unnecessary. It would just burden the parties herein with costs. Having not participated in the lower Court, the Auctioneers would find it so difficult to participate in the Appeal filed. Their role is to act in the intended sale as an Agent of the 1st Respondent and since among the prayers sought is a prayer for stay of execution, should the Court award the said prayer, then the named Auctioneers would not have anybody to lawfully instruct them to proceed with the sale. This prayer is therefore disallowed.
 14. On the main prayer for stay of execution and stay of the intended sale, I agree with the 1st Respondent that there has been an inordinate delay in filing the Application, the Appellant having waited for a period of exactly 2 years, 2 months and 5 days from the time the Judgment was delivered to the time the Application was filed in Court.
 15. Whichever way you look at it, there was quite unnecessary delay and I don't buy the explanation by the Appellant that it is because he was away from home when the Notification of sale was brought home and served upon a member of the family who did not understand the importance of the Notice and the urgency that was required. In answer to this, the Appellant should not have waited for the Notification of sale before making the Application for stay of execution. The same ought to have come immediately the Judgment was delivered and as soon as he made up his mind to Appeal.



16. Secondly, when was the notification served upon the family member? Which family member is this? For how long was he away from home? When did he come back and after how long did he take to move the Court?
17. The Notice of sale is dated the 6/2/2025 and the Notification a day later and the sale was to take place on 7/5/2025 and I believe it was between the 2 dates that the Notice was brought to his home, a period of more than 3 months. He decided to sleep on his rights. The same must also have been notified in the media. It is only when the Appellant was lucky that the sale did not take place for whatever reason, that he decided to move the Court hoping that his star that gave him luck would follow him to Court. Maybe not, and if it does, not with the same results.
18. I also refuse to be persuaded that if this Application is granted, the Respondents and particularly the 1st Respondent would suffer no prejudice – her Kshs. 7,117,098/= and I believe more now due to accruing interest, remains unpaid. Money is the merchandise of Banks. Any shilling remaining unpaid is a loss and therefore a prejudice to the bank. This is not in the interest of justice as presented by the Appellant.
19. However, I buy the argument that if the land Nyandarua/ Githioro/1756 is sold and the Appellant succeeds on Appeal, such Appeal would be rendered nugatory. I will therefore excuse the Appellant and forgive him for the inordinate delay.
20. The Appellant has undertaken to abide by any conditions attached to the stay of execution in line with Order 42 Rule 6 (2) of the Civil Procedure Rules.
21. I will therefore grant the Orders sought save prayer No. (6) of the Application dated 22/9/2025 for the reasons I have advanced above. But the said Application is granted with 2 conditions: -
 1. That the Appellant/Applicant will pay to the 1st Respondent the sum of Kshs. 3,558,549 being half of the outstanding loan as at 6/2/2025 within the next 90 days in 3 equal monthly installments with effect from 26/4/2026 and on the 26th day of the 2 subsequent months.
 2. Title No. Nyandarua/Githioro/1756 shall remain in the custody of the 1st Respondent.
 3. The Appeal herein shall be prosecuted within the next 60 days.
 4. In default of any one installment on its due date, execution to issue.
 5. Mention of this matter on the 30/4/2026 to confirm the first payment as ordered in the 1st condition herein.

These are the orders of the Court.

RULING READ AND DELIVERED AT NYANDARUA THIS 26TH DAY OF MARCH 2026.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Mr. Gichuki for the Appellant.

Mr. Mwaniki for the 1st Respondent.

