



**Muchoki & 4 others v Mbuthia (Environment and Land Appeal  
E043 of 2025) [2026] KEELC 1731 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1731 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E043 OF 2025  
MN GICHERU, J  
MARCH 24, 2026**

**BETWEEN**

**CAROLINE NDUTA MUCHOKI ..... 1<sup>ST</sup> APPLICANT  
ISAAC HARON MBUTHIA MUCHOKI ..... 2<sup>ND</sup> APPLICANT  
JENIFFER WANGARI MUCHOKI ..... 3<sup>RD</sup> APPLICANT  
JOHNSON MWANGI MUCHOKI ..... 4<sup>TH</sup> APPLICANT  
JOSEPH MAINA MUCHOKI ..... 5<sup>TH</sup> APPLICANT**

**AND**

**WACHIRA MBUTHIA ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 11-11-2025. The motion which is brought under Order 22 rule 22 and Order 51 rule 1 of the Civil Procedure Rules and Sections 1A and 1B of the [Civil Procedure Act](#) and all other enabling provisions of the law seeks two (2) residual orders.
  4. That this Court be pleased to grant a stay of execution of the judgment entered against the Applicants herein delivered on 22-10-2025 by the Honourable Susan N. Mwangi, PM, in Murang'a CM ELC No. 65 of 2023 and the resultant decree and all consequential orders pending the hearing and final determination of the Appeal in Murang'a ELC Appeal No. E043 of 2025.
  6. That the costs of this application be in the cause.
2. The motion is based on five (5) grounds and is supported by an affidavit sworn by the Appellants counsel and dated 11-11-2025. The gist of the motion is as follows. The Appellants are aggrieved by the decision of the learned trial magistrate hence this appeal. Secondly, their appeal is arguable and has



a high probability of success. Thirdly, if the decree is executed the Respondent will not be in a position to refund the costs incurred if the appeal is finally successful. The said appeal will also be rendered nugatory. Finally, the Applicants are willing to abide by any orders that the Court may make.

3. The motion is opposed by the Respondent who has sworn a replying affidavit dated 16-12-2025 in which he responds as follows. One, the motion is an afterthought, frivolous, vexatious, meritless, an abuse of the court process and intended to circumvent the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act. Two, the Appellants have failed to demonstrate the conditions necessary for the granting of an order of stay of execution. Finally, the Respondent will be highly prejudiced because he is in the process of executing the decree of the lower Court.
4. Counsel for the parties filed written submissions dated 29-1-2026 and 10-2-2026 respectively. The issue raised in the said submissions is whether the three conditions precedent to the grant of an order of stay of execution under Order 42 rule 6(2) Civil Procedure Rules have been satisfied. The subrule provides as follows.

“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.”
5. From the facts of the case, the only risk that the Appellants run is having the land in dispute being registered in the name of the Respondent. There is no other loss because the Respondent is already in occupation of a portion of the said land. While this may not be said to be substantial loss, if the Respondent were to be registered as the owner of the portion that he occupies and he then transfers it, that would be substantial loss. Secondly, the motion was filed very soon after the judgment. The judgment was on 22-10-2025 and the motion is dated 11-11-2025, a period of about 20 days. As for the security for the due performance of the decree, I find that there is no need for such security because the Respondent is already in occupation of the land the subject matter of the appeal. He has nothing to lose except waiting for the determination of the appeal.
  6. In all the circumstances of this case, I find that it is fair and just to order that the status quo prevailing at the time of the filing of the appeal be maintained such that the Appellants remain as the registered owners of the suit land and the Respondent remains in occupation. It would be cumbersome to have the registration status of the suit land change when the appeal is pending because we do not know what the outcome of the appeal will be.
  7. Consequently and for the reasons given, I allow the notice of motion dated 11-11-2025 in terms of prayer 4. Costs in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 24<sup>TH</sup> DAY OF MARCH 2026.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Magu



Appellants' Counsel – Miss Nyangati

Respondent's Counsel – Miss Murira

