

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NYAHURURU**  
**ELCA NO. E006 OF 2026**

**MICHAEL                      GATHUNGU                      NJOROGE.....**  
**APPELLANT**

**-VERSUS-**

**WILSON                      KINYANJUI                      KAMAU.....**  
**RESPONDENT**

**RULING**

**1.** Before me is a notice of motion application dated 18.3.2026 filed contemporaneously with the suit. The plaintiff seeks orders that pending the hearing and determination of the appeal, there be a stay of execution of the orders issued on 10.3.2026 and the related decree before the lower court, that the court do set aside the orders issued on 23.12.2025 for lack of clarity, that the interlocutory judgment and decree issued against the applicant be set aside and that an order of injunction be

issued restraining the respondent from interfering with parcel L.R. Laikipia/Kinamba Block 1/4927 (MWENJE).

- 2.**The application is premised on grounds that the lower court case was not heard on merits, that the applicant had complied with orders on filing a defence and paying thrown away costs, but execution is now underway on the basis of the remaining bit of the ruling of 23.12.2025 which was not clear. He avers that his advocate sought clarification from the court on the payment of Ksh 150 000 and also prayed for 7 days to make the deposit as the only relative who can assist him is out of the country.
- 3.**In opposition thereof, the respondent filed a Replying Affidavit dated 17.3.2026 where he avers that the applicants application to set aside the judgment was allowed on 23.12.2025 on condition that the applicant was to deposit the sum of Ksh 150 000 in court and pay the thrown away costs of Kshs. 30 000 within 30 days otherwise execution would ensue. However, the applicant did not comply and todate, he has not

deposited the Kshs. 150 000, adding that on 10.3.2026, the court did not deliver any ruling.

**4.** I have considered the rival arguments in relation to the orders sought in the application dated 18.3.2026. The matter is at the infancy stage, but from the material presented before this court, primarily a ruling dated 23.12.2025, it emerges that the suit before the trial court proceeded ex-parte culminating in a judgment delivered on 30.9.2025. The applicant made an application before the trial court to set aside the said judgment, of which in the ruling dated 23.12.2025, the application was allowed conditionally. In particular the applicant was to deposit Kshs. 150,000 in court.

**5.** What emerges is that the applicant did not deposit the sum of Ksh 150 000 as directed by the court. He avers that the order is not clear. It is quite apparent that the issues as to whether the judgment of 30.9.2025 should be set aside or not and whether the applicant has a triable defence were adequately deal with by the trial court in its ruling of 23.12.2025. The said ruling is not a

subject of appeal or review, thus the court cannot revisit the said issues.

**6.** The appeal herein relates to the orders given on 10.3.2026. To start with, the applicant has not availed the said orders for perusal by this court so as to discern what transpired on the said date. However, it is quite apparent that the respondent was given a go ahead to execute the judgment ostensibly because the applicant had not deposited the amount of sh. 150 000 as directed by the court. What is crystal clear is that the orders given by the court on 23.12.2025 were self-executing, needing no further interpretation or reference to the court. There was no room for partial compliance. The applicant was put on notice that failure to comply with the court orders had consequences, the same being that the judgment of 30.9.2025 would be executed. No arguments can really be surmounted to state that the orders given by the court were not clear. In any event, no application was formally made before the trial court seeking a review of the said orders.

7. *“Once bitten twice shy”* is a proverb meaning that a painful experience makes people cautious of repeating it. This proverb ought to have pricked the conscience of the applicant after the ruling of 23.12.2025 where he was given an opportunity to defend the suit. He did not seize that opportunity.

8. In the case of **Equity Bank Limited-vs- West Link MBO Limited- Civil Application No. 78 of 2011**, cited in **Dickson Muricho Muriuki v Timothy Kagondu Muriuki & 6 others [2013] eKLR**, the court stated that;

**“Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure the ends of justice are met.”**

9. In the case at hand, the justice of the day do not warrant the issuance of the orders sought. Thus the application

dated 18.3.2026 is found to be unmerited, the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 26<sup>TH</sup> DAY OF MARCH 2026 THROUGH  
MICROSOFT TEAMS.**

**LUCY N. MBUGUA  
JUDGE**

**In the presence of:**

Parties absent.

Nancy Mwangi - Court Assistant