



**Kariuki v Muchina (Civil Application E005 of 2024)
[2026] KECA 669 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KECA 669 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E005 OF 2024
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA
MARCH 25, 2026**

BETWEEN

NANCY WANGITHI KARIUKI APPLICANT

AND

JOYCE MABUTI MUCHINA RESPONDENT

(Being an application for injunction and stay of execution pending the hearing and determination of an intended appeal against the judgment of the High Court of Kenya at Kerugoya (Muchemi J.) delivered on 24th October, 2023, in Civil Appeal No. E007 of 2020)

RULING

1. Before the Court is an application dated 15th January, 2024, brought under Rules 5(2)(b) and 43 of the Court of Appeal Rules, Rule 73 of the Probate and Administration Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act*. The applicant seeks, inter alia, stay of execution of the Judgment and decree of the High Court of Kenya at Kerugoya (Muchemi J.), delivered on 24th October, 2023; as well as injunctive orders restraining the respondent from interfering with the applicant's possession, or dealing in any manner with parcel No. Inoi/Thaita/969 (suit property), pending the hearing and determination of the intended appeal.
2. The application is supported by grounds on its body and an affidavit sworn on the same date. The suit before the Magistrate's court was in relation to the estate of Douglas Mugo Magondu (deceased), which comprised of the suit property. The applicant is the deceased's sister, while the respondent is the deceased's sister-in-law. The learned magistrate allowed the applicant's protest and distributed the suit property to the applicant absolutely. Aggrieved by this decision, the respondent lodged an appeal before the High Court at Kerugoya (Civil Appeal No. E007 of 2020), where the learned Judge allowed her appeal, and ordered that the deceased's estate be distributed solely to the respondent. On 16th November, 2023, the applicant was granted leave to appeal against the said Judgment of the High Court before this Court, and was further granted an order of stay for a period of sixty (60) days from



the date of the order. The applicant averred that the status quo order was to lapse on 16th January, 2024, hence this application. She asserted that she filed the record of appeal on 11th January, 2024 and served the same upon the respondent. It was her contention that her appeal raises arguable points of law, and that an order for maintenance of status quo would preserve the suit property, and ensure that her appeal is not rendered nugatory in the event it succeeds.

3. The application was opposed. The respondent filed a replying affidavit dated 5th February, 2024. The respondent deposed that the order requesting for maintenance of status quo is ambiguous as the situation on the ground has changed since the applicant filed the application before this Court. In her view, this application has been overtaken by events. She averred that the application was geared at preventing her from enjoying the fruits of her judgment. She asserted that the applicant obtained grant of letters of administration in respect of the estate of the deceased unlawfully, which grant was later revoked. That the applicant continued to utilize the suit property to the detriment of the respondent and her family. The respondent urged that the applicant has not demonstrated that she has an arguable appeal, and further, that the appeal raises new issues that were not canvassed before the two courts below. She averred that any loss suffered in the event the applicant's appeal is successful is quantifiable in an award of damages, since proceeds from sale of tea are quantifiable. She invited us to dismiss the application for lack of merit.
4. The application was canvassed by way of written submissions.
Counsel for the applicant, Mr. Gichoya, reiterated that the applicant has an arguable appeal, and that the appeal will challenge the admission into evidence of an oral agreement allegedly entered between the deceased and the respondent in respect to the suit property. Counsel submitted that the recovery of land based on a contract was a matter to be canvassed before the Environment and Land Court, and not before the Probate court. On the nugatory aspect, counsel submitted that the suit property is registered to the applicant, and that if the orders sought are not granted, the applicant risked being evicted from the suit property. Counsel asserted that the applicant's appeal will be rendered nugatory in the event the suit property is disposed by the respondent. It was his view that the applicant had satisfied all the requirements necessary for grant of the orders sought.
5. Ms. Thungu, learned counsel for the respondent, submitted that the applicant has not demonstrated that her appeal is arguable, and that the issues raised in her grounds of appeal were never raised before the two courts below. She urged that the learned Judge was correct in finding that the suit property was subject to an exchange arrangement and was not available for distribution to the deceased's siblings. Counsel urged that the respondent has not demonstrated what loss she would suffer in the event the orders sought are not granted. It was her submission that the applicant's appeal, if successful, will not be rendered nugatory, as the proceeds from sale of tea leaves can be quantified in an award for damages.
6. We have considered the application, the grounds in support thereof, the replying affidavit, the submissions, the authorities cited and the law. The principles for granting an order for stay of execution under Rule 5(2)(b) of this Court's rules were espoused by this Court in the case of *Trust Bank Limited and Another v. Investech Bank Limited and 3 Others* [2000] eKLR. This Court held thus:

“The jurisdiction of the Court under Rule 5(2)(b) is original and discretionary and it is trite law that to succeed an applicant has to show firstly that his appeal or intended appeal is arguable, to put another way, it is not frivolous and secondly that unless he is granted a stay the appeal or intended appeal, if successful will be rendered nugatory. These are the guiding principles but these principles must be considered against facts and circumstances of each case...”



7. The applicant argues that she has an arguable appeal because the first appellate court erred in finding in favour of the respondent in a dispute between the applicant and the respondent in respect of a succession. It is the applicant's appeal that she is entitled as a beneficiary to inherit the suit property from the estate of the deceased. This assertion is disputed by the respondent. The respondent urged that she is entitled to the suit property as the deceased had prior to his demise exchanged the same with another parcel of land. This is an issue that can only be resolved by this Court when it hears the appeal. At this stage, we are prepared to hold that the intended appeal is arguable. By saying that the appeal is arguable, we do not mean that the appeal may necessarily succeed. We are saying that the issues raised in the intended appeal are worthy of consideration by this Court.
8. As regards the second limb, whether the intended appeal will be rendered nugatory, it was apparent from the rival affidavits filed by the applicant and the respondent that whereas the applicant has the title in respect of the suit property, the respondent is harvesting tea leaves from the said property. The applicant proposes that this Court issues an order of status quo pending the hearing of the intended appeal. Although the respondent opposes the proposal by the applicant on the ground that such order of status quo is imprecise, we are of the view that this dispute being succession one, the suit property should be preserved pending the determination by this Court on appeal regarding who will be entitled to it. In that regard we hold that the applicant has established to our satisfaction that the intended appeal will be rendered nugatory if the order sought is not granted.
9. In the premises therefore, the application for the grant of order of status quo is hereby granted. The prevailing status quo shall be maintained pending the hearing and determination of the intended appeal. That status quo is that the applicant shall not transfer the title in respect of the suit parcel of land to any person pending the hearing and determination of the appeal. The respondent shall remain in possession of the suit property and shall not part with possession of the same pending the hearing and determination of the appeal. There shall be no orders as to costs.

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

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

A.O. MUCHELULE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

