



**Matiri (Deceased) v Munene & 2 others (Civil Appeal (Application)
E036 of 2022) [2026] KECA 660 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KECA 660 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E036 OF 2022
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
MARCH 25, 2026**

BETWEEN

HARRIET MAKIRA MATIRI (DECEASED) APPELLANT

AND

KENNETH KIREMA MUNENE 1ST RESPONDENT

MARTIN KIREMA MUNENE 2ND RESPONDENT

AND

JOYCE KARIMI MATIRI APPLICANT

(Being an application from the Judgment of the Environment and Land Court at Meru (Cherono, J.) delivered by on 23rd February, 2022 in ELC Case No. 106 of 2009)

RULING

1. The application is a notice of motion dated 22nd January, 2025 brought under rule 5 (2)(b) of the Court of Appeal Rules. It has been brought by Joyce Karimi Matiri, describing herself as the legal representative of the deceased appellant. She seeks just one prayer that pending the hearing and determination of the appeal, the execution of the judgement in the Environment and Land Court (ELC) at Meru, by Cherono J. dated 7th February, 2020 and delivered on 23rd February, 2020 be stayed. The application is premised on grounds on the face of the application and in the applicant's supporting affidavit of even date. In brief the applicant contends that he has an arguable appeal on the grounds the ELC Judge erred to declare a trust existed over the suit land. On the nugatory aspect, he contends that the respondents are seeking to have the inhibition order registered against the suit land removed, in which case there was a danger the land may be alienated beyond his reach.
2. The application is opposed. The 1st respondent, in his replying affidavit sworn on 13th March, 2025 avers that the applicant has not demonstrated how the appeal was arguable; that the land in issue was



ancestral land to which they have a stake; that it was registered in the names of their step brother and the deceased appellant's name, who is their paternal grandmother, after their father died while they were minors. He urges that even the appellant admitted the land was ancestral.

3. When the motion came up for hearing before us on the 7th April, 2025, Mr. John Muthomi, learned counsel for the applicant, was present. Mr. Kimathi and Mr. Arithi, for the 1st and 3rd respondents were duly served with the hearing notice on 19th March, 2025, but both kept away.
4. Mr. Muthomi, in brief highlights of the applicants' written submissions, urged that the respondents had filed an application seeking to lift an order of inhibition over the suit land, and to have the Deputy Registrar of the Court sign the transfer documents of the land in their favour. He urged that there was real danger that the suit land may be alienated and urged the Court to exercise its discretion and grant a stay or status quo.
5. When Mr. Muthomi was asked by the Court whether he had annexed or filed the Notice of Appeal, the memorandum of appeal and the judgment of the ELC, he submitted that due to an oversight, none of the said documents were filed with the application.
6. Upon perusal of the record, however, we noted that there was a copy of the judgment of the ELC judge as well as the Notice of Appeal against the judgment of Cheron J. of 10th February, 2020, included in the Record of the Appeal filed by the applicant. It is dated 17th February, 2020 and lodged with the Court on 18th February, 2020. The application was not incompetent as earlier thought. Had we confirmed that there was indeed no notice of appeal in relation to the application and the judgment, decree of order sought to be stayed, this Court would have had no jurisdiction to hear the application. See *Safaricom Limited vs. Ocean View Beach Hotel Limited & 2 Others* Civil Application No. 327 of 2009 [2010] eKLR where Omolo, JA. explained that under rule 5 (2)(b) of the Court of Appeal Rules:

“If there is no notice of appeal lodged, one cannot get an order under Rule 5 (2) (b) because as I have already pointed out the jurisdiction of the Court of Appeal is limited to hearing appeals from the High Court and if there is no appeal or no intention to appeal as manifested by lodgment of the notice of appeal the Court of Appeal would have no business to meddle in the decision of the High Court.”
7. Turning to the application, Mr. Muthomi in his written and oral submissions premises the application on the imminent danger of the suit land being alienated, based on the respondents' application to have the inhibition order registered against the title lifted and to have the Deputy Registrar sign the transfer documents in their favour.
8. On arguability, we have considered that the ELC found that the suit land was ancestral land and that therefore there existed a trust in favour of the respondents. The applicant may have an arguable point in terms of challenging the finding on the existence of a trust. However, we are of the view that even if execution takes place, there is no likelihood the suit land will be sold. Even if it were to be sold, the property can be restored back to the applicant if the appeal succeeds. In the premises, we are not satisfied that the appeal will, in the circumstances be rendered nugatory, if the stay sought is declined and the appeal eventually succeed.
9. We find that the application dated 22nd January, 2025 lacks merit and is dismissed with costs.

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

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

ALI – ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

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