

**IN THE COURT OF
APPEAL AT NYERI**

**(CORAM: KANTAI, MUMBI NGUGI & ALI- ARONI,
JJ.A.) CIVIL APPLICATION NO. E133 OF 2025**

BETWEEN

**ALPHAN GITARI MWANGI.....1ST
APPLICANT JOSEPH GICHOVI
KATHUMBI.....2ND APPLICANT MICHAEL
MUKARIA NJAGI.....3RD APPLICANT
SYMON CHOMBA MBOGO.....4TH
APPLICANT SAMUEL NDEGE
MBOGO.....5TH APPLICANT MBOGO
MWANIKI.....6TH APPLICANT
CYRUS MAINA MUTHIKE.....7TH
APPLICANT
MUTHIKE MBOGO.....8TH
APPLICANT JOSPHAT MURIITHI
CEWA.....9TH APPLICANT SARATI WANJIRU
MUREITHI.....10TH APPLICANT
MARK KAARA KUBUTA.....11TH
APPLICANT WILLIAM GITARI KAMUKU.....
12TH APPLICANT JAMES MUTHIKE
GATIMU.....13TH APPLICANT
ANNA KARIMI NJAGI.....14TH
APPLICANT PETER MACHARIA
NJAGI.....15TH APPLICANT PATRICK FUNDI
NJAGI.....16TH APPLICANT**

AND

**THE LAND
ADJUDICATION OFFICER KIRINYAGA.....1ST
RESPONDENT THE LAND REGISTRAR
KIRINYAGA.....2ND RESPONDENT**

*(Being an appeal against the Judgment and Orders of the
Environment and Land Court at Kerugoya (J.M. Mutungi, J.)
delivered on 17th June, 2025*

in

Judicial Review No.E004 of 2025.)

RULING OF THE COURT

The applicants, **Alphan Gitari Mwangi** and 15 others approached the Environment and Land Court (ELC) at Kerugoya in a judicial review application Mutungi, J. made the following order on 17th June, 2025:

“1. THAT adjudication officer be and is hereby directed to exclude the following parcels of land in respect of which the applicants hold title from the adjudication process; MWEA/MURINDUKO/467, 1730, 1375, 1999, 1062, 873, 1240, 2322, 2226, 2177, 2056, 1698, 1378, 1377 and 1376 pending the hearing and determination of the suit.

2. THAT mention will be on 30.0.2025 for further directions and/or orders.”

The applicants have now approached this Court by Motion brought under **rule 5 (2)(b)** of our rules praying in the main that there be an order of temporary injunction against the Land Adjudication Officer Kiritiri restraining him from proceeding with adjudication over Land Parcel No. Ngariama/Lower Ngariama/431 pending the hearing of the application inter partes and that the said officer be restrained from proceeding with that process pending the hearing of the appeal. In grounds in support of the application and in a supporting affidavit by the 1st applicant Alphan Gitari Mwangi it is said amongst other things that the applicants have lodged an appeal against the said order by ELC; that the appeal is pending yet the adjudication process is ongoing *“... which may render the entire Appeal nugatory as it is challenging the entire process ...;* that the Adjudication officer has declined to admit any form of objection to the process by the applicants and that it is fair and just that the application be allowed. The applicants further states that the adjudication process is illegal; that the appeal has overwhelming chances of success; that the applicants sought leave to commence judicial review proceedings but this was declined by the Judge. Attached

to the Motion is a draft Memorandum of Appeal where 6 grounds of appeal are set out.

In a replying affidavit **Ezekiel K. Kiania**, a Land Adjudication Officer, sets out provisions of the Land Adjudication Act (The Act) which spell out the process for land adjudication. He says, *inter alia*, that a Notice of establishment of an Adjudication Section of Mwea East Sub-County in Kirinyaga County was declared as required by the Act. He says at paragraphs 15-20 (inclusive) of the affidavit:

“15.THAT the Applicants do not have any arguable appeal to seek for orders of injunction because they have not demonstrated to this court that they initiated the adjudication process in the adjudication section where their interest in land are vested.

16. THAT the Applicants are forum shopping and placing the cart before the horse for not following the Statutory Process as provided for under Land Adjudication Act which has all the remedies for their claim in land under adjudication. They should allow the statutory process to proceed because in it all the remedies for their interest in land are covered.

17. THAT the Applicants have not attached any documents to show that the alleged parcel of land Ngariama/lower Ngariama/431 is a parcel indeed recorded as provided for under Section 13 of the Land Adjudication Act.

18. THAT the Applicants interest in land cannot be in the whole adjudication section but on specific parcels hence they cannot seek to stop and/or injunct a lawful statutory process without showing how the same is or will prejudice their interest in land.

19. THAT there are laid mechanisms of solving disputes in an adjudication area which the applicants have not invoked before moving

to

this court thus the orders sought cannot be granted at this stage.

20. THAT the applicants claim is on parcel of land indicated as Ngariama/lower Ngariama/431 while the learned judge in his ruling which the applicant are appealing against is Mwea Murinduko/467, 2730, 1375, 1999, 1062, 873, 1240, 2322, 2226, 2177, 2056, 1698, 1378, 1377, and 1376 which are totally deferent (sic) parcels of land.”

For an applicant to succeed in an application like this one he must, firstly, demonstrate that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that the same is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay. See - ***Stanley Kangethe Kinyanjui vs. Tony Ketter & Others [2013] eKLR.***

We note that the Judge was asked to grant leave to commence judicial review proceedings but that there was no order made in that regard. The Judge instead ordered the Adjudication officer of the relevant area to exclude named titles claimed by the applicants from the adjudication process in that area. From the record it was not clear to the Judge, and it is not clear to us, whether the applicants are claiming the entire area under adjudication. The Judge gave the applicants positive orders in respect of the titles that they claimed to own. We further note as emphasized by the Adjudication officer in his replying affidavit that the adjudication process is ongoing; the Act has provisions for resolution of disputes that may arise during an adjudication process. The applicants have not availed themselves of those dispute resolution mechanisms. As

held in **Speaker of the National Assembly vs. Njenga Karume [1992] KLR 21:**

“...Where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

It was held in **Nguruman Limited vs. Jan Bonde Nielsen & 2 Others [2014] eKLR:**

“Conditions for grant of an injunction are sequential. If prima facie case is not established, the court need not proceed to consider irreparable injury or balance of convenience.”

We find that the applicants have not demonstrated that the appeal is arguable. Being of that view we need not consider any other principle in determining this application.

The Motion fails and we dismiss it with costs to the respondents

Dated and delivered at Nyeri this 25th day of March., 2026.

S. ole KANTAI

.....
JUDGE OF APPEAL

MUMBI NGUGI

.....
JUDGE OF APPEAL

ALI - ARONI

.....
JUDGE OF APPEAL

I certify that this is

*a true copy of the
original*

Signed

DEPUTY REGISTRAR