

**IN THE COURT OF APPEAL
AT NAKURU**

(CORAM: MATIVO, GACHOKA & MURUNGI, JJ.)

**A.) CIVIL APPEAL (APPLICATION) NO. E133
OF 2025**

BETWEEN

SALAT ABDI ALI.....APPLICANT

AND

ZENA IBRAHIM (Suing as Administrator and Legal Representative of the Late SEBIT ABDALLA SEBIT).....1st RESPONDENT ALISLAMIYA ESTATES LTD2nd RESPONDENT

(An application for stay of execution from the judgment of the Environment & Land Court at Nakuru (Dr. M. A. Odeny J.) delivered on 10th June 2025

in

ELC Case No. 229 of 2018

RULING OF THE COURT

1. Salat Abdi Ali, the applicant, seeks to stay execution of judgement and decree issued by the trial court on 10th June, 2025 pending the hearing and determination of Civil Appeal No. E133 of 2025. The substantive appeal is from the decision of the Environment and Land Court at Nakuru(ELC) [Hon. Dr. Justice M. A Odeny J] delivered on 10th June, 2025 in Nakuru ELC Suit NO. 229 of 2018 ordering cancellation of the

applicant's title to the suit property [Title Number
Dundori/Lanet Block 5/1260[New Gakoe] and perpetually

restraining the applicant from entering, occupying, disposing off or otherwise dealing with the said property. This was done after a successful challenge by the 1st respondent of the registration in favor of the applicant principally on the ground that it was illegally obtained.

2. The application is dated 12th November, 2025. It is brought under **Rule 5[2] [b]** of the Court of Appeal Rules 2022. It is supported by the applicant's affidavit sworn on even date in which he depones that being dissatisfied with the decision of the trial court, he lodged a notice of appeal on 13th June, 2025 expressing his intention to appeal. He then lodged the appeal, applied for stay of execution at the superior court but the application was dismissed on 12th November, 2025. He further states that: the temporary orders of stay lapsed; that he has been restrained from entering and occupying the land; that his title shall be cancelled; and if a title is issued in favor of the respondent during the pendency of the appeal nothing stops her from selling, charging or transferring it to third parties which shall render his appeal if successful an academic exercise.

3. Zena Ibrahim the respondent opposes the application and filed a replying affidavit sworn on 15th January, 2026. She is the widow and administrator of the estate of Sebit Abdalla Sebit who died on 18th December, 2010. She depones that her late husband and predecessor in title was the lawful proprietor and occupant of Dundori Block5 [New GAKOE] 1260 having been allocated, through balloting by AL ISLAMIYA ESTATES LTD ,the 2nd respondent a land buying Company in which he was a member and shareholder. He further states that following the balloting and allocation process in the year 1995, he took possession as the rightful owner and used it for agricultural purposes while awaiting to develop it.
4. She maintained that the judgement of the court was right in safeguarding her proprietary right and quiet possession in the suit property. She added that she had met all the requirements for being issued with title to the suit property, the 2nd respondent failed to perform its obligation to process the title in the name of the deceased who was the lawful owner of the land and the title issued to the appellant was

subject to her interest.

5. The respondent contends that the application is misconceived, bad in law and incompetent the applicant has failed to establish: a prima facie case (which we must point out is not an issue for consideration by this Court); that the appeal is not arguable; and that no sufficient cause had been established to warrant the grant of the orders sought, adding that allowing the prayers in the application would grossly offend her proprietary rights and quiet possession in the suit property.
6. We have considered the application, the affidavit and submissions in support thereof, the replying affidavit and submissions in opposition thereto as well as the cited case law.
7. This being an application for stay of execution of judgment and decree under **Rule 5[2] [b]** of the Court of Appeal Rules the applicant has to meet the twin principles; whether the appeal is arguable and whether the application will be rendered nugatory absent stay. Therefore, the question that falls for determination is whether the applicant has on the basis of the material presented before us demonstrated that

he has an arguable appeal which will otherwise be rendered nugatory unless we

issue an order staying the execution of the judgment and decree of the Hon. M. A. Odeny J dated 10th June, 2025.

8. Applications seeking stay of execution pending appeal or intended appeal are very common place in this Court so much so that they have been described as ‘every day fare ‘ while the principles on which the Court exercises its jurisdiction when considering an application of this nature ‘ is old hat’.[see

Stanley Kange’the Kinyajui vs. Tony Ketter & 5 Others

[2013]eKLR.

9. The jurisdiction is original and discretionary a wide and unfettered jurisdiction to be exercised on the basis of whether is just to do so. It does not constitute an appeal from the trial court’s exercise of discretion [**Reuben & 9 Others vs. Nderitu & Another** [1989] KLR 365, the court becomes seized of the matter only after the notice of appeal has been filed [**Halai& Another vs. Thorton & Turpin** [1993] LTD [1990] KLR 365, the court must bear in mind that each case must depend on its own facts and peculiar circumstances [**David Morton**

Silverstein vs. Atsango Chesoni, Civil Appl. No. Nai345 of 2004; a single bona fide arguable ground of appeal is sufficient

and an arguable is not one that must necessarily succeed but one which ought to be fully argued; **[Damji PranjiMandavai vs. Sara Lee Household & Body Care [K] Ltd.** and **Joseph Gitahi Gachau & Another vs. Pioneer Holdings [A] Ltd.**

10. From the submissions made before us we note that the parties to the application fully appreciate the legal principles guiding the Court in the exercise of its original and discretionary jurisdiction under **Rule 5[2] [b]**. Where they sharply differ is what outcome the application of those principles to the peculiar facts of the instant case should yield.
11. The applicant has contended that he has an arguable appeal which is already filed and which will be rendered nugatory unless we order stay while the respondent argue that no arguable appeal demonstrated.
12. In the Memorandum of appeal dated 26th July, 2025 the appellant faults the trial judge for: finding the respondent had proved her case to the required standard despite lack of evidence to back her claim ; failing to analyse the evidence

on record and reaching the wrong finding; making a finding
and
issuing orders that departed from the pleadings ;failing to

appreciate that suit land was acquired from a land buying company and the procedure for acquiring such land; and failing to consider and appreciate the appellants written submissions and authorities.

13. To put the matter in context a brief background to the present contest is appropriate. The dispute relates the contested ownership of land parcel number 1260 between the applicant and the 1st Respondent the widow of the late Sebit Abdalla Sebit who was shareholder of Alislamiya Estates Ltd [2nd Respondent] a land buying company being holder of share certificate number 130. He participated in balloting and was issued a plot ownership for plot number 1260 on 27/3/1996 under serial number 214986. While awaiting the title to be processed in his name he got information that the applicant had been registered as the owner and invaded the land in the year 2009 claiming that he had bought it from the 2nd Respondent. Sebit then filed suit against both the company and the applicant for cancellation of the title on the basis that it been obtained fraudulently and illegally.

14. Both defendants acknowledged and admitted that the late Sebit was a shareholder in the 2nd Respondent Company but denied that he balloted and was allocated plot number 1260 insisting that the subject land was allocated to the applicant and that the 1st Respondent's plot was a different one.
15. After hearing the parties including take the evidence of the person was the treasurer of the Company at the time when subdivision, balloting and allocation of the plots was done the court found the plaintiff had proved her case on a balance of probabilities while “ the second defendant had failed to provide credible evidence how two distinct plots number numbers 111 and 1260 were issued under the same serial number 214986 and how the 2nd defendant who joined the company in the 2008 more than a decade after the original allocations was issued a share certificate for plot number 111 yet somehow ended up holding the title for plot number 1260”.
16. We have looked at the grounds of appeal against the backdrop of the judgement appealed from as outlined above and without going to the merits of the main appeal we are

not persuaded

that any of the grounds of appeal framed by the applicant disclose bona fide arguable ground.

17. Accordingly, the application dated 12th November, 2025 is without merits and is hereby dismissed with costs.

Dated and delivered at Nakuru this 10th day of April 2026.

J. MATIVO

.....
JUDGE OF APPEAL

M. GACHOKA C. Arb, FCIArb.

.....
JUDGE OF APPEAL

MURUNGI B.

KAIRARIA

.....
JUDGE OF APPEAL

*I certify that this is a true copy of the original.
Signed.*

DEPUTY REGISTRAR