



Kiratu & 2 others (Administrators of the Estate of the Late Leah Gacheru) v Muturi & others (In Their Own Individual Capacity and on Behalf of Mia Moja Self Help Group) (Civil Application E136 of 2025) [2026] KECA 728 (KLR) (10 April 2026) (Ruling)

Neutral citation: [2026] KECA 728 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E136 OF 2025
JM MATIVO, MB KIARARIA & PM GACHOKA, JJA
APRIL 10, 2026**

BETWEEN

**DENNIS MAINA KIRATU 1ST APPLICANT
ANGELA WANJA KIRATU 2ND APPLICANT
JOSEPH MWANGI KIRATU 3RD APPLICANT
ADMINISTRATORS OF THE ESTATE OF THE LATE LEAH GACHERU**

AND

**PHILIP MUTURI & OTHERS RESPONDENT
IN THEIR OWN INDIVIDUAL CAPACITY AND ON BEHALF OF MIA MOJA
SELF HELP GROUP**

(An application for injunction pending hearing and determination of an intended appeal from the judgment and decree of the Environment and Land Court at Nakuru (Dr. M. A. Odeny, J.) delivered on 29th October 2025 in ELC Case No. E057 of 2024)

RULING

1. The applicants invoke the original and discretionary jurisdiction of this Court under Rule 5[2] [b] of the Court of Appeal Rules 2022 and seek an order of injunction to restraining [the respondents] from dealing with LR. Nakuru Municipality Block 17/86 pending the hearing and determination of intended appeal against the Judgment delivered on 29th October, 2025 in Nakuru ELCLA EO57 of 2024 (Odeny J) which dismissed the appellants' appeal against the decision of the Chief Magistrate court [Nakuru] dated 26/9/2024 [B. Ochieng C.M] in ELC 291 of 2019.
2. The application is supported by the grounds set out on the face of the notice of motion, together with the supporting affidavit sworn by Dennis Maina Kiratu sworn on 9th December 2025. To contextualize



the appeal it is necessary for us to give a brief background to the dispute. The dispute relates to a parcel of land measuring 1 acre that was to be excised from parcel of land Nakuru / Municipality/17/86. The land was initially registered in the name of Zachariah Gacheru Kiratu but upon his demise it was transferred to his wife Leah Gacheru. The applicants are the administrators of the estate of the late Leah Gacheru.

3. During his lifetime the late Zachariah Gacheru Kiratu sold a parcel of land measuring 1 acre to the respondents. The parties signed an agreement dated 18th December 2003. The purchase price was a sum of Kshs790,000.00. The respondents paid a deposit of KShs.600,000.00, leaving a balance of Kshs. 190,000.00. The balance was to be paid on completion, but that did not materialize. Consequently, the respondents instituted Nakuru CMELC No. 291 OF 2019. The trial magistrate entered judgement in favour of the respondents. She ordered the cancellation of the title issued in the name of the late Leah Gacheru and a further ordered of rectification for the 1acre to be excised and transferred to the respondents. The trial magistrate also ordered the respondents to pay the balance of the purchase price, amounting to Kshs. 190,000.00.
4. The applicants aggrieved by that judgement, appealed to the Environment and Land Court (ELC) in Nakuru ELCLA E057 of 2024. In her judgment delivered on 29.10.2025, Odeny J dismissed the appeal and upheld the decree issued by the trial magistrate.
5. The applicants are dissatisfied with the ELC judgement, triggering the appeal before us. They filed a notice of appeal dated 7th November 2025 and an undated memorandum of appeal raising 6 grounds which we summarize as follows: that the suit was incompetent as it was time barred under the *limitation of Actions Act*; that the learned judge failed to appreciate that the respondents were in breach of contract; that specific performance could not be ordered in the circumstances of this case; that courts cannot rewrite a contract between the parties; and that the case was not proved on a balance of probabilities.
6. The application is opposed. Phillip Muturi on behalf of the respondents filed a replying affidavit sworn on 12th January 2026. The gist of their argument is that they were not in breach of the agreement, that the judgment of the first trial court and first appellate court are sound; that the suit is not time barred as the cause of action arose in 2003 and the suit was filed in 2012 which is within the allowed 12 years for a land claim and that the applicants have not met the conditions for grant of an injunction.
7. We had this application virtually on 9th March 2027. The applicants were represented by Ms. Wangari and the respondents by Mr. Githui. The parties relied on their respective submissions that were highlighted orally. The applicants' submissions and respondents' submissions are both dated 19th February 2026.
8. The applicants, citing the case of Trust Bank Limited and Another vs. Investech Bank Limited and 3 others [2000] eKLR and Stanley Kangethe vs. Tony Keter and 5 others [2013] eKLR, the applicants argued that they have an arguable appeal that will be rendered nugatory absent stay. They submitted that the suit was defective as it was time-barred and that courts cannot rewrite a contract between parties. To the applicants, the case before the trial court was not proved on a balance of probabilities and the learned judge erred in upholding that judgement.
9. On their part, the respondents placed reliance on Attorney General vs. Okiya Omtatah Okoiti & Another [2019] eKLR, Amina Shiraz Yakub vs. David Baburam Jagatram [2017] and stated that the intended appeal is not arguable and will not be rendered nugatory absent stay. The respondents argued that the suit was filed within the prescribed statutory period and that the trial magistrate was right in enforcing the contract that was signed by the parties, which position was upheld by the ELC.



10. We have considered the rival contentions of the parties in support and opposition to the application for injunction together with the relevant case law cited by the parties setting out the principles that govern the exercise of this Court's jurisdiction when considering an application for an order of injunction under Rule 5 [2] [b] of the Court of Appeal Rules.
11. Both parties agree that the principles governing the exercise of this Court's original and discretionary jurisdiction when considering an application of this nature are well settled. That the applicant must sequentially surmount the twin barrier of demonstrating that the appeal is arguable and secondly that the appeal will otherwise be rendered nugatory unless the order sought is granted.
12. We have carefully considered the grounds of appeal, rival affidavits and the submissions. At this stage we only need to be satisfied that at least one ground is arguable and unless we grant a stay the intended appeal will be rendered nugatory unless we grant a stay. We have set the background to this dispute and the ground that the applicants basically asserting that the respondents were the one that breached the agreement, that the suit is time barred under the Limitation of Actions Act and the suit was not proved on a balance of probabilities. Having considered the grounds of appeal we are not satisfied that they are arguable, but we shall say no more, and we leave the issues for consideration by the bench that will hear and determine the appeal.
13. The applicants have failed to satisfy the first limb that they have an arguable appeal and therefore it is not necessary for us to consider the second limb, whether the appeal will be rendered nugatory absent stay.
14. In the final analysis, we find that the application dated 9th December 2025 falls far short of the legal threshold for the exercise of our discretion under Rule 5[2] [b] in favor of the applicants. It lacks merit and is hereby dismissed with costs to the respondents.

DATED AND DELIVERED AT NAKURU THIS 10TH DAY OF APRIL 2026.

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C. Arb, FCIArb.

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JUDGE OF APPEAL

MURUNGI B. KAIRARIA

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

