



Mungai & another v Njogoo & another (Administrators of the Estate of Francis Njogoo Mwatati alias Jogoo Mwatati) (Environment and Land Appeal E035 of 2025) [2026] KEELC 2014 (KLR) (15 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2014 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E035 OF 2025
MN GICHERU, J
APRIL 15, 2026**

BETWEEN

JOSEPH KIGERA MUNGAI 1ST APPELLANT

RACHEL MUKUHU NDUNG’U 2ND APPELLANT

AND

ANNE MUTHONI NJOGOO 1ST RESPONDENT

OLIVIA WACUKA NJOGOO 2ND RESPONDENT

**ADMINISTRATORS OF THE ESTATE OF FRANCIS NJOGOO MWATATI
ALIAS JOGOO MWATATI**

(Being an Appeal from the Decree and Judgment delivered by Honourable Peter Ndwiga (Chief Magistrate) on 31st July 2025 in Murang’a Chief Magistrate’s Court ELC No. E015 of 2024)

RULING

1. This ruling is on the notice of motion dated 1-9-2025. The motion which is by the Appellant is brought under Sections 3A and 63 (e) of the *Civil Procedure Act*, Orders 42 rule 6(6) and 51 rule 1 of the Civil Procedure Rules and Rule 3(2) of the *Judicature Act*.
2. The motion seeks two residual orders.
3. That there be a stay of proceedings and execution of the judgment and decree given by Hon. Peter Ndwiga (CM) on 31-7-2025 in Murang’a CM’s Court case No. ELC 015 of 2024 pending the hearing and determination of the appeal herein.
4. That the costs of this application be provided for.



3. The motion is based on nine (9) grounds and is supported by an affidavit of the Appellant dated 1-9-2025. The essence of the motion is as follows. One, the Appellants were the Plaintiffs in the lower Court case while the Respondents were the Defendants. In the judgment dated 31-7-2025 the lower court allowed the Respondents' counterclaim with costs. Two, the Respondents have filed a bill of costs which was listed for taxation on 3-9-2025 with an intent of executing on costs. Three, the Appellants are aggrieved by the judgment of the trial court because the trial court failed to consider the evidence and arguments presented in the trial court by the Appellant. Four, the Respondents are not persons of means and should execution proceed, the appeal will be rendered nugatory as it will be impossible to recover the costs from the Respondents should the appeal succeed. Five, the motion has been brought without undue delay.

For the above and other reasons, the Appellants pray that the motion be allowed.

4. The motion is opposed by the Respondents and the 1st Respondent has sworn a replying affidavit dated 23-9-2025 in which she replies as follows. Firstly, the application is void at its inception as the appeal filed cannot form a sound basis for the orders sought as the claim in the lower court is time barred under the *Limitation of Actions Act* and therefore the judgment of the lower court is without blemish. Secondly, the caution lodged by the Appellant is in process of being removed. Thirdly, the appeal was filed out of time without leave of the Court. Finally, payment of the costs cannot be stayed and the motion should be dismissed.
5. Counsel for the parties filed written submissions dated 22-11-2025 and 7-1-2025 respectively. The issues raised in the submissions are as follows.
 - (i) Whether the appeal was filed out of time without leave of the court.
 - (ii) Whether the Appellants have met the threshold for stay of proceedings and execution.

6. I have carefully considered the motion, in its entirety including the grounds, the supporting affidavit, the replying affidavit and the written submissions by learned counsel for the parties. I find that the two issues identified by the counsel for the Appellants will resolve the dispute.

7. On the 1st issue, I find it is not clear to me when the appeal was filed. While the learned counsel for the Appellant says, in his written submissions at paragraph 10, that the appeal was filed on 30-8-2025, the record of the Court shows that the appeal was filed on 2-9-2025. 30-8-2025 was a Saturday.

Under Order 50 rule 3 of the Civil Procedure Rules, Sundays or days when offices are closed are excluded in computation and reckoning of time. It provides as follows.

“Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof, such act or proceeding cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.”

Only a critical look at the Case Tracking System(CTS) will inform on exactly when the appeal was filed. Be that as it may, I will for now assume that the appeal was filed on time.

8. Regarding the second issue, I find that the Appellants have not quite met the threshold for grant of stay of execution. They have not proved that by the paying costs, they will suffer substantial loss. Apart from saying that the Respondents are not persons of means, they have not said how. The Respondents who are the successful litigants in the lower court gained something from the litigation. It is the Appellants who have nothing to show for the litigation and who may not have the means to pay the costs of this



litigation that they seek to prolong. However, so that execution does not take place before the appeal is heard and determined, I will allow the motion dated 1-9-2025 but on condition that the Appellants deposit in court Kshs 100,000/= in the next 30 days failing which the motion will stand dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 15TH DAY OF APRIL, 2026.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Jackline

Appellant's Counsel – Mr. Muinde

Respondent's Counsel – Mr. T.M. Njoroge

