

**IN THE COURT OF  
APPEAL AT NAKURU**

**(CORAM: MATIVO, GACHOKA & MURUNGI,**

**JJ.A.) CIVIL APPLICATION NO. NAK E015 OF**

**2026 BETWEEN**

**SITONIK OLE LOTAPASH.....APPLICANT**

**AND**

**HUMPHREY MBUGUA NJACHE.....1<sup>ST</sup> RESPONDENT**

**MARTIN RUNO.....2<sup>ND</sup>**

**RESPONDENT**

*(Being an application from the judgment of the Environment and Land Court of Kenya at Nyahururu (**Bor, J.**) dated 11<sup>th</sup> February 2025*

*in*

***ELC No. 326 of 2017).***

**\*\*\*\*\***

**RULING OF THE COURT**

1. By an application dated 28<sup>th</sup> January 2026 brought under sections 3, 3A and 3B of the Appellate Jurisdiction Act and Rule 5 (2) (b) of the Court of Appeal Rules, 2022, the applicant prays for: (a) stay of execution of the judgment and decree dated 11<sup>th</sup> February 2025 delivered by *Bor, J.* in Nyahururu Environment and Land Court Case No. 326 of 2017, Humphrey Mbugua Njache vs. Sitonik Ole Lotapash pending the hearing and determination of his appeal against the said

judgment; and, (b) stay of further proceedings in the said case pending the hearing and determination of his appeal, and, (c) costs of the application to be provided.

2. The application is premised on the grounds listed in its body and the applicant's supporting affidavit sworn on 28<sup>th</sup> January 2026. The main grounds in support of the application are: (a) the applicant has already filed a record of appeal dated 23<sup>rd</sup> January 2026 challenging the said judgment; (b) unless this application is allowed, the 1<sup>st</sup> respondent's eviction application shall be heard and determined by the Superior Court before the appeal can be determined; (c) that the appeal is arguable and has strong chances of success. However, it will be rendered nugatory and a mere academic exercise if the orders sought are not granted; (d) that the application was filed without unreasonable delay; and, (e) it is only fair and just that the application be allowed.
3. In opposition to the application, the 1<sup>st</sup> applicant filed a notice of preliminary objection dated 5<sup>th</sup> February 2026 stating that:

**(a) That this Honourable Court lacks jurisdiction**

**to adjudicate over issues not raised before  
the Superior Court in Nyahururu Environment  
and**

**Land Court Case No. 326 of 2017 Humphrey Mbugua Njache vs. Sitonik Ole Lotapash.**

**(b) That the joinder of the 2<sup>nd</sup> respondent is a misjoinder, irregular and offends the established principles of appellate practice, which require that parties to an appeal must be those who were parties to the suit in the trial court unless exceptional circumstances are demonstrated.**

**(c) That the application and appeal in its entirety is frivolous, vexatious and a blatant abuse of this Honourable Appellate Court, the Appellate Jurisdiction Act (Cap. 9) and the Court of Appeal Rules, 2022 and should be struck with costs to the 1<sup>st</sup> respondent.**

4. In response to the application, the 2<sup>nd</sup> respondent filed the replying affidavit dated 6<sup>th</sup> March 2026. Other than introducing factual issues which were not adduced before the trial court where he was not a party, he supported the applicant's application.
5. During the virtual hearing of the application, learned counsel Mr. Wakhisi appeared for the applicant, learned counsel Mr. Kimani appeared for the 1<sup>st</sup> respondent while learned counsel Mr. Juma appeared for the 2<sup>nd</sup> respondent.
6. The applicant filed submissions dated 6<sup>th</sup> March 2026 in support of his application, essentially urging that the application meets the twin principles of arguability of the

appeal and the nugatory aspect. We have carefully read the said submissions and the authorities cited.

7. The 1<sup>st</sup> respondent in his submissions opposed the application urging the grounds in his preliminary objection highlighted earlier. The said grounds are not relevant in a 5(2) (b) application which succeeds or fails on two prerequisites, namely: (a) whether the appeal is arguable, and (b) whether the appeal or intended appeal will be rendered nugatory if the stay sought is refused. The only relevant ground urged by the 1<sup>st</sup> respondent is that he was legitimately registered as the *bona fide* owner of Title No. Laikipia/Marmanet/4563 on the 5<sup>th</sup> day of March 2025, and therefore any orders for stay are overtaken by events and as such, the application is devoid of any merit and ought to be dismissed with costs.
8. The 1<sup>st</sup> respondent's argument that the applicant's application has been overtaken by events, if correct has the potential of determining this application. This is because the Court cannot grant a stay of execution under Rule 5(2) (b) of the Court of Appeal Rules if the substratum of the appeal has already been overtaken by events. The Court's

reasoning is typically

that it cannot issue orders in vain and a stay cannot be granted for a decree that has already been fully executed. Once a matter has been "*spent*" or fully executed, it can no longer be the subject of a stay of execution. In this context, if the relief sought is to prevent an act that has already occurred, the application becomes academic or moot and serves no practical utility. The primary objective of granting a stay of execution is to preserve the *status quo* rather than disrupt it. Courts are generally reluctant to grant a stay if doing so would create a new state of affairs or interfere with a situation already settled by the lower court's decision.

9. The applicant has in support of his application annexed a notice of motion filed by the 1<sup>st</sup> respondent before the trial court. In the affidavit in support of the application, the 1<sup>st</sup> respondent avers that the land in question has since been transferred to him. He annexed a copy of the title. These factual averments have not been contested. Accordingly, we find that the applicant seeks to stay what has already taken place. We decline the invitation to do so. Consequently, the

applicant's application dated 28<sup>th</sup> January 2026 is dismissed with costs to the 1<sup>st</sup> respondent.

**Dated and delivered at Nakuru this 10<sup>th</sup> 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.**