



REPUBLIC OF KENYA



**Wanyange & another v Njoroge (Civil Application E122 of 2025)
[2026] KECA 731 (KLR) (10 April 2026) (Ruling)**

Neutral citation: [2026] KECA 731 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E122 OF 2025
JM MATIVO, PM GACHOKA & MB KIARARIA, JJA
APRIL 10, 2026**

BETWEEN

CATHERINE WAIRIMU WANYANGE 1ST APPLICANT

JAMES ISAAC MWANGI WANYANGE 2ND APPLICANT

AND

JOYCE NYAMBURA NJOROGE RESPONDENT

(Being an application for stay of execution of the eviction order of the Environment and Land Court of Kenya at Nakuru (M. A. Odeny, J.) dated 12th November 2025 in ELC No. 336 of 2013)

RULING

1. By an application dated 14th November 2025 brought under section 3A of the *Appellate Jurisdiction Act* and Rules 5 (2) (b) and 47 (1) of the *Court of Appeal Rules, 2022*, the applicants pray for stay of execution of the eviction order made in *Nakuru ELC No. 336 of 2013* on 12th November 2025 pending hearing and determination of their intended appeal on such reasonable terms as this Court may deem just. The applicants also pray that the costs of the application abide the outcome of the appeal.
2. The application is premised on the grounds listed on its body and the annexed supporting affidavit sworn by the 1st applicant on 14th November 2025. The key grounds in support of the application are:
 - (a) the applicants have appealed against the ruling and orders of the *ELC No. 336 of 2013* issued on 12th November, 2025 vide a notice of appeal dated 14th November, 2025;
 - (b) the applicants had sought review of the trial court's judgement on grounds that the applicants were no longer suitable parties because the grant of letters of administration issued to them was revoked;



- (v) the decree holder has obtained orders to demolish their buildings on the suit premises as well as their eviction and has obtained police assistance;
 - (vi) in the impugned ruling dated 12th November, 2025, the trial court dismissed their application for stay and review of the judgment, thus allowing the respondent to evict them with the help of the OCS Naivasha Police Station;
 - (v) the eviction orders may be enforced any time;
 - (vi) the applicants have lodged a notice of appeal and their intended appeal has high chances of success;
 - (vi) in the event the eviction is carried out, their intended appeal will be rendered nugatory.
3. In opposition to the application, the respondent filed the replying affidavit dated 21st November 2025 urging that:
- (a) the applicants lack the locus standi to bring the application for lack of grant of letters of administration for the estate of Francis John Wanyange-deceased because the grant issued to them has since been revoked;
 - (b) the applicant's application for leave to file their notice of appeal out of time in *E096 of 2022* was dismissed by Achode, J on 23rd February 2024;
 - (c) the applicants have resorted to filing multiple applications to frustrate the respondent;
 - (d) the applicants have no arguable appeal.
4. The applicant's advocate Mr. John Kiarie Njuguna filed a supplementary affidavit introducing their application dated 4th June 2025 filed before the trial court which gave rise to the ruling sought to be appealed against.
5. During the hearing of the application on 9th March 2026 the applicant was represented by Mr. Kiarie Njuguna Advocate while the respondent was represented by Mr. Kimondo Mubea advocate. Both parties adopted their respective written submissions which we have considered.
6. The germane ground urged by the applicants' counsel in his submissions in support of the application is that their appeal is arguable and that in absence of stay, the appeal will be rendered nugatory.
7. The crux of the respondent's advocates submissions is that the applicant's application for leave to their notice of appeal out of time was dismissed on 23rd February 2024, a fact which is not disputed, therefore, their appeal has no chances of success. Further, the applicants have not demonstrated that their appeal will be rendered nugatory.
8. A reading of the ruling dated 23rd February 2024 annexed to the respondent's replying affidavit shows that the applicants' application for leave to file a notice of appeal out of time against the judgment delivered by Omolo, J in *Nakuru ELC No 336 of 2013* was dismissed on 23rd February 2024 by Achode, JA. The import of the said ruling is that there is no competent notice of appeal against the substantive judgment issued by the trial court. There is no evidence or assertion that the applicants sought a reference against the order of the single judge in accordance with the rules.
9. The applicants now purport to be aggrieved by a post judgment ruling delivered by the trial court on 12th November 2025 in the same case. However, a reading of their dated 9th February 2025 which gave rise to the ruling dated 12th November 2025 clearly shows that the applicants' main prayer was "stay of



execution of the Decree and Certificate of costs together with all consequential orders pending appeal.” Noticeably, the applicants were seeking to stay the same decree against which their application to file a notice of appeal was dismissed. Ironically, the applicants mischievously filed a notice of appeal dated 14th November 2025 seeking to appeal against the ruling dated 12th November 2025, which sought to stay the same decree against which their application was dismissed by Achode, JA.

10. The applicants cannot purport to file a subsequent notice of appeal pretending to be seeking to appeal against a post judgment ruling but indirectly attacking the same judgment and certificate of costs arising from the same judgment. Under section 2 of the *Civil Procedure Act* (Cap. 21) of the Laws of Kenya, a decree is defined as the formal expression of an adjudication that conclusively determines the rights of parties regarding matters in controversy. So long as this decree stands and remains unchallenged, the applicants cannot purport to go around it by purporting to appeal against the subsequent ruling in which they sought to stay the same decree. On this ground alone, this application is for dismissal.
11. At the risk of flogging a dead horse, there is no competent notice of appeal before this Court. The applicants’ subsequent notice of appeal thinly veiled as seeking to appeal against the ruling dated 12th November 2025, arising from the dismissal of their application seeking to stay the same decree and certificate of costs is a clever way of circumventing the ruling by Achode, JA. It is typically an abuse of Court process. Rule 5 (2) (b) of the *Court of Appeal Rules*, 2022 does indeed recognize that a Notice of Appeal is the jurisdictional “gateway” through which the Court of Appeal is seized of a matter to grant interim reliefs. We have said enough to demonstrate that the applicants’ application dated 14th November 2025 is fatally defective. Accordingly, we dismiss the said application with costs to the respondent.

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.

