



REPUBLIC OF KENYA



**M'Itine v Rutere (Family Appeal E022 of 2024)
[2026] KEHC 4650 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4650 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
FAMILY APPEAL E022 OF 2024
SM GITHINJI, J
APRIL 13, 2026**

BETWEEN

MARGARET MBERENYA M'ITINE APPELLANT

AND

RUTH KIRUMBA RUTERE RESPONDENT

RULING

1st Application

1. For determination is the Notice of Motion dated 26/3/2025 under Sections 45 and 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules, seeking that:
 1. Spent
 2. The Honourable Court be pleased to issue an order of injunction barring the Respondent, her assigns, agents, servants and successors in title from entering into and subdividing L.R. No. Abothuguchi/Kariene/600 pending the hearing and determination of the main appeal.
 3. The Honourable Court be pleased to issue an order of injunction barring the Respondent, her assigns, agents, servants and successors in title from entering into and subdividing L.R. No. Abothuguchi/Kariene/600 pending the hearing and determination of the main appeal.
 4. The Honourable court do issue any other or better orders as shall meet the ends of justice.
 5. The costs of this application be borne by the Respondent.
2. The application is premised on the grounds that the Appellant was aggrieved by the trial court's judgment of 25/9/2024 and has appealed against it. The Respondent has embarked on bringing potential buyers on the locus in quo with an aim of defeating the appeal which has high chances of success. The said potential buyers have begun placing beacons on the subject matter and embarked on



utilizing their respective portions even before the subject matter has been distributed as per the lower court judgment, and it is prudent to have the orders herein sought granted.

3. The Respondent herein swore a replying affidavit on 11/11/2025 in opposition to the application. She denied either being served with the memorandum of appeal or record of appeal. She further disputed the allegations of either bringing potential buyers or placing beacons on the land. She has lived peacefully and continuously on the land for over 50 years, making it her home and sole source of livelihood, and the imputation of intermeddling is false. In her view, the application is a desperate attempt to sanitize an appeal filed in bad faith, and to retain irregular ex parte orders issued without jurisdiction, since an unserved appeal cannot confer any rights upon a party.

2nd Application

4. For determination is the Notice of Motion dated 27/8/2025 brought under Sections 47 and 76 of the Law of Succession Act, Section 79G of the Civil Procedure Act, Order 42 Rule 35 and Order 51 of the Civil Procedure Rules, Sections 68 and 73 of the Land Registration Act, seeking that:
 1. Spent
 2. The ex parte orders of inhibition issued herein on the 4th day of April 2025 be set aside, varied and/or discharged forthwith.
 3. The Appeal lodged by the Petitioner/Appellant be struck out and/or dismissed for want of service on the Respondent/Applicant.
 4. The Land Registrar, Meru Central District, be directed to forthwith lift the inhibition registered against Land Parcel No. LR.no.abothuguchi/Kariene/600 to allow the Applicant to proceed with subdivision and processing of title.
 5. The costs of this application and of the proceedings be borne by the Respondent/Appellant.
5. The application is premised on the grounds that the Respondent successfully protested the confirmation of grant, and judgment was entered in her favour, granting her the subject land. The Appellant failed to serve the Memorandum of Appeal and application upon the Respondent, and instead relied on a false affidavit of service. The Record of Appeal itself erroneously refers to one Kiogora Arithi As the intended Advocate for the Respondent, yet that firm has never represented the Respondent in any matter. This misrepresentation not only confirms lack of proper service but also demonstrates that the Respondent was deliberately kept unaware of the proceedings. The Appellant irregularly obtained ex parte orders of inhibition, which now prejudice the Respondent who was on the verge of processing her title. The Appeal and Inhibition orders are an abuse of the court process, frivolous, vexatious and calculated to deny the Respondent the fruits of a valid judgment.
6. The applications were canvassed by way of written submissions, which were only filed by counsel for the Respondent.

Determination

7. Having considered the applications, the responses and the submissions on record, the issue for determination is whether the applications are merited.
8. The 2 applications are the two sides of the same coin, and thus a determination of one will effectively dispose of the other, and I will start with the former.



9. Pursuant to Order 42 Rule 6 (6) of the Civil Procedure Rules, the High Court is vested with jurisdiction to entertain an application for temporary injunction pending appeal from a subordinate court as follows; “Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
10. The principles for grant of temporary injunction pending appeal were settled by the Court of Appeal in Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] 1 EA 86, as follows, “The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is (i) whether the applicant has laid out a prima facie case with a probability of success; (ii) whether the applicant might suffer irreparable injury if the injunction is not granted; and (iii) (if there is doubt) whether the balance of convenience favours the applicant; Giella v Cassman Brown and Co Ltd [1973] EA 358. The conditions for granting an interlocutory injunction are sequential so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt the third one can be addressed.”
11. It is discernable from the grounds of appeal, that the Appellant is dissatisfied with inter alia the erroneous introduction of the aspect of adverse possession in the suit and the misdescription of the Respondent as the sole beneficiary of the estate. As such, the appeal cannot be said to be frivolous.
12. Invariably, I find that the appeal, which is undeniably arguable will be rendered nugatory if the injunction is denied, and the Appellant will suffer irreparable loss and damage, in the eventuality of a successful appeal.
13. I am persuaded on the test of Giella v Cassman Brown (1973) EA 358, that the Appellant has a prima facie case with probability of success, and that damages would be an inadequate remedy. The balance of convenience thus tilts in favour of granting the injunction sought.
14. On whether the appeal ought to be struck out for want of service, courts have consistently held that the power to strike out an appeal is draconian and must be exercised sparingly in the clearest of cases, because it arbitrarily drives a litigant from the seat of justice without a hearing.
15. The upshot from the foregoing considerations is that the application dated 27/8/2025 is in want of merit and it is hereby dismissed.
16. The application dated 26/3/2025 is merited and it is allowed in terms of prayers 2 and 3 thereof.
17. Costs be in the cause.
18. Mention for further directions on 21/5/2026.

DATED AND DELIVERED AT MERU THIS 13TH DAY OF APRIL, 2026.

S.M. GITHINJI- JUDGE

13/4/2026

Court:-

Parties – Absent.

They be notified of the outcome and directions.

