



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kathuri v Mutero & 2 others (Civil Suit 20 of 2018)  
[2026] KEHC 5118 (KLR) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5118 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL SUIT 20 OF 2018  
EM MURIITHI, J  
APRIL 16, 2026**

**BETWEEN**

**SELINA WANJIRU KATHURI ..... APPELLANT**

**AND**

**TARSILA WARIGIA MUTERO ..... DEFENDANT**

**AND**

**MURIITHI MUNORI ..... INTENDED DEFENDANT**

**AND**

**ELSY MUTHONI ..... APPLICANT**

**RULING**

1. While this matter was pending Judgment on the appeal by the Appellant Selina Wanjiru Kathuri herein against the Respondent, Tarasila Warigia Mutero, deceased and now requested by Mr. Muriithi Munori, the applicant Ms. Elsy Muthoni sought to arrest the Judgment set for 16<sup>th</sup> April, 2026 by application dated 26<sup>th</sup> February, 2026.
2. The appellant Selina Wanjiru claims a share in the suit estate land as a daughter (daughter in law) of the deceased and she named Tarasila Warigia Mutero, who was wife of the deceased as a respondent (now represented by Munori).
3. It would appear from submissions by Munori (while Judgment has not been concluded) that there is no application to the appeal by the personal representative of Tarasila the Respondent. The position taken by Munori was briefly that “it is true that Tarasila is deceased. Selina should get the land to subdivided to her children”. Selina seeks that the land be divided between Tarasila, wife of the deceased, and herself as daughter-in-law of the deceased.



4. Elsy Muthoni, the applicant in application dated 26<sup>th</sup> February, 2026, seeks arrest of delivery of Judgment scheduled for 16<sup>th</sup> April, 2026 pending hearing of the application inter partes. The Court heard the application inter partes on 8/4/2026 and ruling reserved for the very date earlier set for judgment on the appeal.
5. While no substantive relief is sought in the application but the ground set out in the certificate of urgency indicate her claim to be one of a recipient of a gift from deceased/defendant” she alleged that a new title from the suit land Baragwe/Guama/167 had already been issued and before “the demise of the defendant she had already transferred her portion to the applicant herein as a gift”.
6. The Green Card register on the property indicate entry on 26<sup>th</sup> October, 2022 transferring suit land to Selina Wanjiru the applicant herein and Elsy Muthoni the applicant in application of 26<sup>th</sup> February, 2026 searches dated 17<sup>th</sup> February, 2026 indicate registration of parcels 6127 in name of Selina Wanjiru Kathuri on 11<sup>th</sup> November, 2022 and parcel 6125 in the name of Elsy Muthoni on 24<sup>th</sup> November, 2022.
7. The Applicant seeks to be heard before the Judgment of the court.
8. In the Replying Affidavit of 16<sup>th</sup> March, 2026 Mr. Muriithi Munori who substituted the Respondent Tarasila Warigia deponed that the applicant is “a total stranger to me and therefore her application should be dismissed with costs” and he prayed that the court adopts “the consent made by Selina Wanjiru Kathuri and Muriithi Munori.”
9. On her part, the appellant Selina by Replying Affidavit of 16<sup>th</sup> March, 2026 accepts an order of the court in Succession Cause 109 of 2006 granting the suit land to herself and Elsy Muthoni but which was appealed from by Embu Civil Appeal No. 24 of 2011 where the deceased’s mother Tarasila (now represented by Munori) urged that she had been misled by her advocate to add Elsy Muthoni in her portion of the property.
10. It appears that this appeal was subsequently withdrawn (see Judgment on application from Gitari J) on Judgment of 7<sup>th</sup> June, 2019 High Court Succession Cause No. 313 of 2012 Estate of Sebastian Kathuri which dismissed the present applicant’s application for revocation of Grant made in Keruguya Succession Cause No. 254 of 2006 filed by Selina the appellant herein.
11. The deceased’s mother Tarasila the Respondent in this appeal had filed a Succession Cause No. 109 of 2006 in which the Court ordered that the applicant Elsy Muthoni takes a share together with Selina. It is the mother’s (Tarasila’s) appeal No. 24 of 2011 (Embu) which was Gitari J notes in Succession No. 313 of 2012, was withdrawn.
12. The trial court file in this present matter indicates that on 2<sup>nd</sup> June, 2022 the court allowed an application for the court’s Executive Officer to execute transfer documents to give effect to the Judgment of the court despite the pending of Civil Appeal No. 20 of 2018 reasoning that “To this Court in the absence of a stay execution and proceedings by High Court, there is no way this court can decline to allow the application.”
13. The position of the matter before the Court is as follows: -
  - i. By lawful order of the Court of 2nd June, 2022 in enforcement of the order of the court in Succession Cause 109 of 2006 from which this appeal arises, the applicant was registered owner of a portion of subdivision of parcel of land no. Baragwe/Guama/167.
  - ii. The consent between the appellant and the substituted respondent (for Tarasila) is pending Judgment of the court.



- iii. The application for enforcement of the Lower Court order was filed by Tarasila (now deceased) on 22<sup>nd</sup> February, 2022 leading to the registration of the applicant as owner of subdivisions of Parcel No. Baragwe/Guama/167 being Baragwe/Guama/6126 and 6125, respectively on 11th November, 2022 and 24<sup>th</sup> November, 2022.
- iv. As registered owner of the subdivision of suit property by order of the trial court, the applicant Elsy Muthoni is entitled in accordance with right to fair hearing under Article 50(1) of *the Constitution* to be heard on the appeal.
- v. Consequently, the Judgment set for 16<sup>th</sup> April, 2026 after proceedings taken on 17<sup>th</sup> February, 2026 in the absence of the applicant Elsy Muthoni will be arrested and stayed to await a full hearing on the appeal with notice to applicant herein.

### **Orders**

14. Accordingly, for the reasons set out above the judgment set for 16<sup>th</sup> April, 2026 is arrested formally and the appeal is reopened for hearing. The appeal shall be on a date to be fixed.
15. The applicant Elsy Muthoni will be served with the Record of the Appeal as a person directly affected by the appeal for hearing on a date to be fixed in consultation with the parties.
16. The Court file on the related Kerugoya High Court Succession Cause No. 313 of 2012 shall be availed at the hearing.
17. There shall be no orders as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF APRIL 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Ms. Elsy Muthoni Applicant.

Ms. Selina Wanjiru Kathuri the Appellant.

Mr. Muriithi Munori, Personal representative/ substituted party for Respondent.

