

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LANDCOURT AT NYANDARUA

ELCLA NO E013 OF 2024

BENSON CIIRA KAIBEI.....1ST PLAINTIFF.

JANE NJERI KAIBEI.....2ND PLAINTIFF.

VERSUS

JULIUS MWANGI MWAURA & 9 OTHERS.....DEFENDANTS.

RULING:

The Appellants herein moved this Court by way of a Notice of Motion dated 1/4/2025 seeking for an Order of Stay of execution of the Judgment and Decree delivered on 10/7/2024 in Nyahururu CMELC case No. 34 of 2020 where their case was dismissed with costs to the Respondents. The stay is sought pending the hearing and determination of the current Appeal. On the face of the said Application, and in the Affidavit in Support of Benson Ciira Kaibei sworn on 1/4/2025 the Applicants said that they were aggrieved by the Judgment of 10/7/2024 and should the Court fail to grant the said stay, the Appellants whose Appeal has high chances of success are likely to be evicted from the suit land and be rendered homeless and destitute. The Application has been made timeously and the Respondents would not suffer any prejudice in any way if the stay Application is granted.

The Applicants also says they are willing to comply with any conditions that the Court may grant.

The 1st to 7th Respondents through their Counsel, Eunice Wamucii Ndegwa, filed a Replying Affidavit sworn on 22/5/2025 deponing that there is nothing to stay since the Appellants' suit was dismissed. The Appellants had sought eviction of the Respondents in the lower Court. They were never on the suit land. Only recovery of costs can be stayed.

Time and time again I have said that it is not right to say that if stay of execution is granted there would be no prejudice to the Respondent. Certainly, time is normally of the essence in every Judgment granted by the Court.

I have read the Judgment of the Honourable E. H. Keago, Chief Magistrate, Nyahururu where the Orders sought for were: -

1. A Declaration that the late Joseph KIBII GATHOTE (Deceased) was the proprietor of all that plot originally known as NYANDARUA/SILIBWET/1848 and now subdivided into NYANDARUA/SILIBWET/2329/2330/2331/2336,2337,2465,2361 and 2362 and in the names of the 1st, 2nd and 3rd Defendants and MUHORO KAIBEI GATHOTE (Deceased).

2. An order cancelling Title Nos. NYANDARUA/ SILIBWET/2330/ 2337 and 2362 in the names of the 1st Defendant, Title No. NYANDARUA/SILIBWET/2329 and the subsequent subdivision being 2465 and 24361 registered into the names of the 2nd and 7th Defendants respectively, Title No. NYANDARUA/SILIBWET/2336 registered in the name of the 8th Defendant and Title NYANDARUA/SILIBWET/2331in the name of MUHORO KAIBEI GATHOTE (Deceased) respectively and

registration thereof in the names of BENSON CIIRA KAIBEI and JANE NJERI KAIBEI as Trustees for the Estate of JOSEPH KAIBII GATHOTE (Deceased).

3. An order directed at the 1st to the 9th Defendants for delivery of vacant possession of their respective parcels No. NYANDARUA/ SILIBWET/2330/2337 and 2362, 2329, 2331,2336, 2361 and 2465 forthwith and/or in default an order for eviction therefrom to issue.

4. General Damages and mesne profits for the period of Trespass.

5. An Order of permanent injunction to issue restraining the 1st to the 9th Defendants either by themselves, their servants, agents, employees or persons claiming under their names from interfering with the parcel occupation and use of the parcel of land No. NYANDARUA/SILIBWET/1848 and now subdivided into NYANDARUA/SILIBWET/2329/2330/2331,2336/2337/2465/ 2361 and 2362 by the Plaintiffs all the lawful beneficiaries of the estate , their agents, servants and for employees.

6. Cost of the suit and interests.

In order to balance the symmetry herein, I will order: -

1. That the Title Nos. NYANDARUA /SILIBWET / 2329 ,2330,2331, 2336,2337,2462 and 2365 in the names of the 1st, 2nd,7th and 8th Defendants do remain in the names of the said 1st, 2nd, 7th and 8th Respondents until the determination of this Appeal or further orders.

2. NYANDARUA /SILIBWET / 2330/2337/2362 in the names of the 1st Respondent do remain in the name of the 1st Respondent until the hearing and determination of this Appeal or further orders of this Court.

3. Title Nos. NYANDARUA /SILIBWET / 2329 ,2362,2465, 2329 and 2361 registered in the names of the 2nd and 7th Respondents remain in the said names until the determination of this Appeal or any further orders of this Court.

4. Title No. NYANDARUA /SILIBWET / 2331 in the name of Muhuro Kaibei (Deceased) do remain in the name of the Deceased until the hearing and determination of this Appeal or any further orders of the Court.

5. I will also order that the trees on the aforesaid parcels of land should not be cut down, felled or destroyed until further orders of the Court.

6. Finally, half of the costs taxed should be paid to the Respondents' Advocates within the next 45 Days.

These are the orders of the Court.

Ruling dated, signed and delivered at Nyandarua this 16th Day of April, 2026.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Appellant's Counsel: Mr. Ojare.

Respondent's Counsel: Mr. Chege.