



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELCL APPEAL CASE NO. E002 OF 2026**

**PATRICK KITHINJI  
MATUMBI.....APPELLANT**

**=VERSUS=**

**MONICA RIGIRI  
KANGA.....RESPONDENT**

***(Being an appeal against the Judgment of the Chief Magistrate Court at Meru [Hon M Nyigei - PM] dated 18/12/2025 in Meru CMC E & L Case No. 232 of 2018)***

**RULING**

1. Falling for determination in this ruling is the appellant's notice of motion dated 8/1/2026. Through it, the appellant seeks an order staying execution of the judgment rendered on 18/12/2025 in **Meru CMC E & L Case No 232 of 2018**. He also seeks an order maintaining status quo in relation to land parcel number **Nthimbiri/Igoki/9** and its subdivisions, pending the hearing and disposal of this appeal. The two key questions to be answered in the ruling are: (i) Whether the said application meets the criteria upon which this court

exercises jurisdiction to grant an order of stay of execution pending the hearing and disposal of an appeal before it; and (ii) Whether the application meets the criteria upon which this court exercises jurisdiction to grant an interlocutory injunction in the nature of a status quo order pending the hearing and disposal of an appeal before it. Before I analyse and dispose the two issues, I will briefly outline the parties' respective cases.

2. The application was expressed as brought under **Order 42 rule 6** of the **Civil Procedure Rules**; **Section 13** of the **Environment and Land Court Act**; and **Sections 1A, 1B** and **3A** of the **Civil Procedure Act**. It was premised on the grounds outlined in the motion and in the appellant's supporting affidavit dated 8/1/2026. It was canvassed through written submissions dated 13/2/2026, filed by **M/s A G Riungu & Co Advocates**.
3. In summary, the case of the applicant is that he was aggrieved by the judgment of the trial court and he brought the present appeal to challenge the said judgment. The impugned judgment was premised on a misapprehension of material facts, particularly the incorrect view that there was no consent of the Land Control Board sanctioning the transfer of the suit land to him and the unfactual view that there was no duly executed transfer of the suit land to him by the late **Charles M'Miriti**. The applicant adds that subsequent to delivery of the impugned judgment, he diligently undertook an exercise of tracing official records relating to the transfer and he was able to obtain documentary evidence demonstrating that the late Charles M'Miriti lawfully

transferred the suit land to him during his lifetime. He adds that the said transfer was effected pursuant to a duly issued land control board consent; a duly executed transfer instrument; and lawful registration of the transfer. The applicant relies on copies of the said documents which he annexed to his affidavit.

4. The applicant argues that the exhibited documents demonstrate that the transfer of the suit land to him was a lawful *intervivos* transaction, contrary to the unfactual premise upon which the impugned judgment was founded. He contends that unless the stay order is granted, the respondent may proceed to enforce the impugned judgment and obtain a cancellation of the title and an irreversible alteration of the land register. He adds that execution of the judgment will occasion him substantial and irreparable loss and will render the appeal nugatory. Lastly, he states that it is just and equitable that the status quo be preserved.
5. The respondent opposed the application through her replying affidavit dated 30/1/2026. Her case is that the application is *“littered with falsehoods and suffer from want of form and substance”*. She argues that the documents which the applicant is waving were never tendered as evidence during trial and states that the applicant has not demonstrated how the alleged evidence which was never tendered during trial and was never subjected to scrutiny through cross-examination shall be countered by her. She faults the applicant for failing to move the trial court upon the alleged discovery of the alleged new evidence. She adds that at all material times, the late Charles M’Miriti who was her father

was senile for a lengthy duration of time and could not comprehend any issues. She points out that the transfer which the applicant is relying on is dated 27/1/2005 which was two days to the demise of the late M'Miriti.

6. The respondent adds that in the trial court, the applicant initially stated that he was given the suit land as a gift but later changed his case and contended that he bought the suit land in an auction in 2001. She faults the applicant for avoiding to approach the trial court for a stay order because he knows that his corrupt scheme was exposed. She urges the court to reject the application.
7. The court has considered the application, the response to the application and the submissions tendered. As pointed out in the opening paragraph of this ruling, the two issues that fall for determination in the ruling are: (i) Whether the application satisfies the criteria upon which this court exercises jurisdiction to grant an order of stay of execution pending the hearing and disposal of an appeal before it; and (ii) Whether the application meets the criteria upon which this court exercises jurisdiction to grant an interlocutory injunction in the nature of a status quo order pending the hearing and disposal of an appeal before it. I will be brief in my sequential analysis and disposal of the two issues.
8. The relevant criteria upon which a third-tier superior court exercises jurisdiction to grant an order of stay of execution pending the hearing and disposal of an appeal before it has been legislated and is contained in **Order 42 rule 6(2)** of the **Civil Procedure Rules** which provides as follows:

***“No order for stay of execution shall be made under subrule (1) unless-***

- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and***
- (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”***

**9.** In ***Halai & another. V Thornton & Turpin (1963) LTD [Civil Application No Nai 15 of 1990]***, the Court of Appeal stated as follows:-

***“Thus, the superior court’s discretion is fettered by three conditions. Firstly; the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable doubt.”***

**10.** The impugned judgment was rendered on 18/12/2025. This appeal was lodged on 9/1/2026. The present application was, similarly, filed on 9/1/2026. This was a period of 21 days. Given the above period, the view the court takes is that the application was brought without unreasonable delay.

- 11.** Has the applicant demonstrated the likelihood of substantial loss? Execution of the impugned judgment will culminate in the reinstatement of the suit land into the name of the late M'Miriti. For any other dealings to be registered against the title, there must be a succession order by a succession court. For a succession court to dispose the suit land through succession, the parties seeking confirmation orders will have to satisfy the succession court that there is no pending ownership litigation over the land. No evidence of an impending disposal of the suit land through succession has been demonstrated. I do not therefore think the applicant has demonstrated the likelihood of substantial loss.
- 12.** Has the applicant tendered security for the due performance of the decree? It was the obligation of the applicant to tender evidence-based proposals on security. He elected to do nothing in terms of tendering evidence-based proposal. As a matter of fact, he did not give any proposal on security. He nonetheless wants the court to stop a decree-holder from enjoying the fruits of her judgment.
- 13.** For the above reasons, the court finds that the criteria for granting an order of stay of execution pending disposal of an appeal before it has not been met.
- 14.** Has the criteria for granting an interlocutory injunction in the nature of a status quo order been met? The jurisdiction of this court to grant an interlocutory injunction in an appeal is granted by **Order 42 rule 6(6)** of the **Civil Procedure Rules** which provides 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.”***

- 15.** Over the years, Kenya’s superior courts have developed principles that guide the exercise of the above jurisdiction (see **(i) Madhupaper International Limited Vs Kerr [1985] KLR 840; (ii) Venture Capital & Credit Limited Vs Consolidated Bank of Kenya Ltd; Civil Application No 349 of 2003 (174 of 2003 UR); and (iii) Butt V Rent Restriction Tribunal (1983) KLR 417.**
- 16.** Suffice it to state that, the jurisdiction of a first appellate court to grant an interlocutory injunction under **Order 42 rule 6(6)** of the **Civil Procedure Rules** is a discretionary and equitable one. Secondly, the discretion will not be exercised in favour of an applicant whose appeal is frivolous; the applicant must demonstrate that a reasonable argument can be put forward in support of his appeal. Thirdly, the discretion should be refused where it would inflict greater hardship than it would prevent. Fourthly, the applicant must show that refusal to grant the injunction would render his appeal nugatory. Fifth, the court is to be guided by the principles in **Giella Vs Cassman Brown & Company Ltd [ 1973] EA 358.** Lastly, whenever disposing a plea for an

interlocutory injunction, the court does not make definitive or conclusive pronouncements on the key issues in the dispute.

**17.** In the present application, the applicant wants to be granted an injunction at the appellate stage. He, not demonstrated that he had a counterclaim in the trial court. He has not demonstrated that there subsisted a status quo order in his favour during the pendency of the suit in the lower court. Above all, the documents which he is waving and which form the bedrock of his plea for an interlocutory injunctive order in form of a status quo order were never tendered as evidence in the trial court. They do not form part of the record of the trial court. In the circumstances, the documents cannot be the basis of the view that the applicant has an arguable appeal. Yet the applicant's case is anchored entirely on the alleged documents which do not form part of the evidence on record in the trial court. Given the above circumstances, I do not think the applicant has met the criteria for granting an interlocutory injunction pending the hearing and disposal of an appeal by this court.

**18.** The result is that the application dated 8/1/2026 is rejected and dismissed for lack of merit

**DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF APRIL, 2026.**

**B M EBOSO [MR]  
ELC JUDGE**