



REPUBLIC OF KENYA



**Makumbi & another v Kalala (Environment and Land Appeal  
E005 of 2026) [2026] KEELC 2083 (KLR) (23 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 2083 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E005 OF 2026  
FM NJOROGE, J  
MARCH 23, 2026**

**BETWEEN**

**NGUMBAO KENGA MAKUMBI & ANOTHER & ANOTHER ..... APPELLANT**

**AND**

**KAMBI KALALA ..... RESPONDENT**

**RULING**

1. The application dated 27<sup>th</sup> January 2026 is seeking a stay of execution of the judgment in Kaloleni MCELC Number E 027 Of 2024 pending appeal.
2. This court must examine whether the application satisfied the conditions in Order 42 Rule 6 of the Civil Procedure Rules
3. As to whether there is an appeal in place, there is a Memorandum of Appeal dated 27<sup>th</sup> January 2026, and that satisfies the prerequisite of presence of an appeal under Order 42 Rule 6.
4. As to whether there was any inordinate delay in bringing the application, it is noteworthy that the impugned judgment was delivered on 23<sup>rd</sup> January 2026 and the application was filed on 28/1/2026. The application has thus been brought quite promptly.
5. As to whether the appeal may be rendered nugatory, it is stated that the judgment granted substantive proprietary reliefs over land to the respondent thereby exposing the appellants to imminent execution eviction and dispossession. The respondent admits that the judgment was delivered in his favour.
6. I have examined the judgment and found that in the proceedings it was apparently discerned by the trial court that the defendant claimed that the suit property forms part of Dollar Group Ranch which is registered and independently managed and the respondent's family had no lawful claim thereto. In the case, the respondent claimed the land is unregistered while the appellants claimed that the land is part of registered land known as kilifi /dola/10. The appellants also claimed that the suit is sub judice



Kilifi Principal Magistrate Court ELC Case Number E177 Of 2023 Ngumbao Kenga Makumbi and Others Versus Karisa Kambi Kalala & Others. The appellants called evidence and produced a copy of certificate for lease for Kilifi/Dola/10. They also produced a copy of a letter from the Chief confirming the death of the respondent among other documents. I have noted that the learned trial magistrate took notice of the letter confirming that Kambi Kalala is deceased but nonetheless went on to refer to paragraph 3 of the plaint where the respondent had pleaded that the suit property belongs to the family. However, this court considers it to be a triable issue on appeal as to whether or not the claim ought to have been supported by succession proceedings.

7. The learned trial magistrate found that the respondent had discharged his burden of proof and proved his case on a balance of probabilities. She also found that the appellants had not discharged their burden of proof and dismissed their counterclaim. The effect of her judgment was that the land measuring 50 acres or thereabouts was declared to belong to the respondent's family, and a permanent injunction was put in place which restrained the appellants by themselves or their agents from entering upon cultivating trespassing or in any other manner whatsoever interfering with the suit property.
8. I find very little evidence cited in the judgment regarding the use to which the land was put by either of the parties. However, this court appreciates that in the event that the appeal succeeds the appellants may have been denied of possession of the suit land without any justification if they are indeed in such possession at the moment. As the appellants state that the judgment and decree expose them to imminent execution eviction and dispossession, the respondent is silent as to whether he is in possession. Since the respondent does not appear to assert possession of the same this court is inclined to order stay of execution of the trial court's orders pending appeal.
9. I therefore find that the application dated 27<sup>th</sup> January 2026 has merit and I grant in terms of prayer number 3 thereof. The orders granted are subject to the applicant filing and serving a record of appeal within 45 days from the date of this order, and also supply the court with a hard copy of the said record of appeal, in default of which the orders of stay of execution will automatically lapse. This matter will be mentioned on 24<sup>th</sup> June 2026 for directions as to the hearing of the appeal.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 23<sup>RD</sup> DAY OF MARCH 2026.**

**MWANGI NJOROGE,  
JUDGE, ELC, MALINDI.**

