



Muriuki v Wamugo & 9 others (Environment and Land Appeal E003 of 2025) [2026] KEELC 1939 (KLR) (12 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1939 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E003 OF 2025
LG KIMANI, J
MARCH 12, 2026**

BETWEEN

JAMRICK WANJAU MURIUKI APPLICANT

AND

PETER KAROKI WAMUGO 1ST RESPONDENT

LYDIA NYAMBURA WAWERU 2ND RESPONDENT

JERIOETH MURINGI MUGO 3RD RESPONDENT

MARY KONYU MUGO 4TH RESPONDENT

MARAGARET WAMBUI MURIUKI 5TH RESPONDENT

MARAGARET WAMBUI MUGO 6TH RESPONDENT

JOSEPH MATHENGE MUGO 7TH RESPONDENT

NJERENGU TUMBUTI MUGO 8TH RESPONDENT

SERAH WANGARI NJERENGU 9TH RESPONDENT

SIMON NJERENGU 10TH RESPONDENT

(Being an appeal from the ruling delivered on 18th February 2025 by Honourable Viola Sandra Kosgei in the Nyeri CM ELC No. E0 59 of 2024)

RULING

1. The Appellant filed the Notice of Motion dated 27th May 2025 seeking the following orders:

1. Spent.



2. That the Respondents by themselves, their agents, servants or anyone claiming to act on their behalf be restrained by way of injunction from evicting the Applicant, trespassing, alienating, transferring, tampering and or in any way dealing with the said Parcel of Land L.R Nyeri/Endarasha/590 and more specifically 2 acres thereof occupied by the Applicant pending hearing and determination of this application.
 3. That pending the hearing and determination of this application and this appeal, status quo over Land Title Number Nyeri/Endarasha/590 be and hereby maintained.
 4. That costs of this application be provided for.
2. The application is supported by the affidavit of the Applicant, who deposed that in Nyeri CM ELC No. E059 of 2024, the trial court (Hon. Viola Sandra Kosgei) delivered a ruling on 18 February 2025, dismissing the suit. He averred that on the following day, the Respondents invaded the land he occupies and vandalised the developments he had made thereon. According to the Applicant, the said ruling did not authorise the Respondents to interfere with his occupation or to evict him from the land.
 3. The Applicant further stated that he fears for his life and property, contending that the Respondents have demonstrated a willingness to attack him on the land unless restrained by the court.
 4. He deposed that on 15th September 2014, he purchased one acre of land from land parcel L.R. Nyeri/Endarasha/590 from Erastus Kagara Njerengu alias Erastus Kagara Mugo (deceased), who is the Respondents' brother. He further purchased an additional one acre from the deceased, being land that the deceased was to inherit from his father, Wamugo Njeregu.
 5. The Applicant stated that on 23rd February 2023, he met with the 1st, 2nd, 7th and 9th Respondents at the DCI offices, where they acknowledged his beneficial ownership, and he paid the balance of the purchase price.
 6. He further deposed that on 13th August 2024, while harvesting onions from the land which he has cultivated for about ten years, he was allegedly ambushed by individuals, including the 7th, 8th and 10th Respondents, who were armed with weapons and threatened to kill him if he did not leave the land. He stated that they assaulted him and inflicted a cut on the back of his head with a panga. The incident was reported at Mweiga Police Station, and the Respondents were subsequently charged in Criminal Case No. E984 of 2024.
 7. The Applicant annexed a draft Memorandum of Appeal, contending that the intended appeal has a high probability of success and stating that he has requested typed proceedings from the trial court. He therefore seeks protection of his right to quiet possession of the suit property and preservation of the substratum of the intended appeal pending its determination, maintaining that the Respondents will suffer no prejudice if the orders sought are granted.

The Respondents' Case

8. The application is opposed through the replying affidavit sworn by the 1st Respondent. He deposed that in the ruling delivered on 18th February 2025, the trial court found that the Respondents lacked locus standi to be sued in the matter. He further stated that the suit land is registered in the Respondents' names and that the deceased, from whom the Applicant claims to have purchased the land, had no interest in the property.
9. The 1st Respondent further deposed that the Applicant was aware of the issue of capacity, as evidenced by the fact that he had filed a citation to accept or refuse a grant of letters of administration in Nyeri



CMCC Misc. Succession Cause No. E119 of 2024, which was still pending at the time he filed the trial suit.

10. He also stated that the Applicant had previously filed Nyeri ELC Cases No. E004 and E005 of 2024 seeking similar reliefs, but those suits were withdrawn after the Respondents raised a Preliminary Objection on grounds that the matter was sub judice and that the Respondents lacked the capacity to be sued.
11. On that basis, the Respondent contends that the orders sought are untenable and that the intended appeal has no chances of success, particularly because the dispute relates to the estate of a deceased person and the parties lack the requisite capacity to litigate on behalf of the estate.
12. The Respondent also denied that the Applicant is in occupation of the alleged two acres of land and instead alleged that the Applicant has been using threats of violence in an attempt to trespass onto the Respondents' land.

The Applicant's Supplementary Affidavit

13. In his supplementary affidavit sworn on 4th August 2025, the Applicant reiterated that he has been in occupation of two acres of the suit land for over ten years.
14. He further deposed that before entering into the sale agreement with the deceased, he conducted due diligence and confirmed that the vendor was entitled to 4.85 acres of the suit land, having inherited the same from his late father through Succession Cause No. 597 of 2012, after which ownership was transmitted accordingly.
15. The Applicant accused the Respondents of unlawfully interfering with the records at the Lands Registry, resulting in the cancellation of the vendor's name and replacement with that of Margaret Mugo without lawful justification.
16. He maintained that unless the orders sought are granted, he faces the risk of eviction from the suit property, which he states is his primary source of livelihood as a peasant farmer, and that such eviction would render him destitute.

The Applicant's Submissions

17. Counsel for the Applicant submitted that the application is premised on the ground that the Applicant purchased two (2) acres out of the suit property, which he has been in continuous occupation of for over ten years without interference from the Respondents or their agents. It was submitted that although the Applicant purchased the land, the vendor passed away before transferring the same into the Applicant's name.
18. Counsel further submitted that after the death of the vendor, the Respondents allegedly interfered with the records at the Lands Registry, resulting in the cancellation of the vendor's name and its replacement with that of Margaret Mugo, who is a Respondent in this matter.
19. It was further submitted that unless the status quo is preserved pending the hearing and determination of the appeal, the Applicant stands to suffer irreparable harm, as the two acres constitute his primary source of livelihood. Counsel argued that there is therefore an imminent need for the Court to grant the orders sought.
20. The Applicant also contended that the Respondents will suffer no prejudice if the injunctive orders are granted since they have allegedly never been in occupation of the two acres in question.



21. Relying on the authority of *Trust Bank Ltd & another v Investech Bank Ltd & 3 others*, Counsel submitted that the intended appeal is arguable and raises issues worthy of consideration by the appellate court.
22. Counsel further argued that if the appeal ultimately succeeds, the failure to grant the orders sought would render the appeal nugatory, particularly because the Respondents have allegedly informed the Applicant that the County Surveyor intends to visit the suit property to carry out subdivision, which could alter the status of the land before the appeal is heard.

The Respondents' Submissions

23. Counsel for the 1st to 10th Respondents submitted that the power to grant an injunction pending appeal is discretionary and should be exercised judiciously. In that regard, reliance was placed on the decision in *Waithaka & 3 others v Kenya Urban Roads Authority & another*.
24. Counsel submitted that it is not disputed that Erastus Kagara, the alleged vendor, is deceased and that the Applicant was aware that the Respondents do not hold letters of administration to the estate of the deceased. Consequently, it was argued that the Respondents lack the legal capacity to represent the estate and therefore could not properly be sued in respect of the alleged transaction.
25. In support of this argument, Counsel relied on the authorities of *Alfred Njau & others v City Council of Nairobi* and *Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & another*, which emphasise the requirement of legal capacity in instituting or defending proceedings relating to a deceased person's estate.
26. On that basis, the Respondents submitted that the Memorandum of Appeal raises frivolous grounds and has no chances of success, and therefore urged the Court to dismiss the application with costs.

Analysis and Determination

27. The Applicant filed the present application seeking injunctive orders pending the hearing and determination of the intended appeal against the ruling delivered on 18th February 2025 in Nyeri CM ELC No. E059 of 2024.
28. I have carefully considered the application, the affidavits on record, and the rival submissions by Counsel for the parties. And consider that the issue for determination is whether the Applicant has satisfied the conditions for the grant of an injunction pending appeal.
29. The principles governing the grant of an injunction pending appeal are now settled. The Court exercises this power sparingly and only where it is satisfied that the applicant has demonstrated that the intended appeal is arguable and that, unless the orders sought are granted, the appeal, if successful, would be rendered nugatory. These principles were set out in *Trust Bank Ltd & another v Investech Bank Ltd & 3 others* [2000] eKLR, where the Court held that an applicant must demonstrate that the appeal is not frivolous and that the subject matter of the appeal would be rendered nugatory if the orders sought are not granted.
30. Further, the famous case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 established the principles for granting an interlocutory injunction as follows:
 - a. The applicant must show a prima facie case with a probability of success.
 - b. The applicant must show that they will suffer irreparable loss if the injunction is not granted.
 - c. If the court is in doubt, it will decide the application on the balance of convenience.



31. Gacheru J in the case of Waithaka & 3 others v Kenya Urban Roads Authority & another (Environment and Land Appeal E019 of 2023) [2023] KEELC 22107 (KLR) cited by the Respondents herein observed that:

“...It is trite that an order of injunction pending appeal is a discretionary one, which will be exercised against an Applicant whose Appeal is not frivolous. However, the discretion should be refused where it would inflict greater hardship than it would avoid.”

32. The court has the discretion to grant an injunction pending appeal if the court deems that the failure to grant the order will render the appeal nugatory. Alnashir Visram J(as he then was) summarised the criteria for grant of injunction pending appeal as follows in the case of Patricia Njeri & 3 Others V National Museum Of Kenya[2004] eKLR:

“In the Venture Capital case, the Court of Appeal said that an order for injunction pending appeal is a discretionary matter. The discretion must, however, be “exercised judicially and not whimsically or arbitrarily.” This discretion is guided by certain principles, some of which are as follows:

- a. The discretion will be exercised against an Applicant whose appeal is frivolous (See Madhupaper International Limited vs Kerr (1985) KLR 840 (cited in Venture Capital). The Applicant must state that a reasonable argument can be put forward in support of his appeal (J. K. Industries vs KCB (1982 – 88) KLR 1088 (also cited in Venture Capital)
- b. The discretion should be refused where it would inflict greater hardship than it would avoid (See Madhupaper supra).
- c. The Applicant must show that to refuse the injunction would render his appeal nugatory (See Butt vs Rent Restriction Tribunal (1982) KLR 417 (cited also in Venture Capital).
- d. The Court should also be guided by the principles in Giella vs Cassman Brown & Company Ltd (1973) EA 358 as set out in the case of Shitukha Mwamodo & Others (1986) KLR 445 (also cited in Venture Capital).”

Whether the Applicant has a prima facie case

34. In order to succeed in an application for an injunction, an applicant must demonstrate the existence of a right capable of protection. In the Court of Appeal decision of Mrao Ltd v First American Bank of Kenya Ltd & 2 Others, O’Kubasu JA observed as follows:

“...a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right and the probability of success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

35. Upon perusing the documents annexed to the supporting affidavit, the Applicant has exhibited an agreement for the sale of one (1) acre out of LR No. Nyeri/Endarasha/590 entered into between himself and one Erastus Kagara Njerengu alias Erastus Kagara Mugo (now deceased). The Applicant has also annexed a Certificate of Confirmation of Grant issued on 12th June 2014, in the Estate of Wamugo Njeregi (Deceased). From the said certificate, it is indicated that Erastus Kagara Mugo, the vendor, was confirmed to have a share of 4.85 acres in the suit property, LR No. Nyeri/Endarasha/590.



35. In the Court's view, the foregoing documentation prima facie demonstrates that the Applicant asserts a recognisable interest in the suit property. At this interlocutory stage, this is sufficient to establish the existence of a right capable of protection and therefore satisfies the first limb for the grant of an injunction.

Whether the Intended Appeal is Arguable

33. The Applicant contends that he purchased two acres out of land parcel L.R. Nyeri/Endarasha/590 from one Erastus Kagara Njerengu alias Erastus Kagara Mugo (deceased) and that he has been in occupation of the same for over ten years.
34. The Respondents, on the other hand, contend that the alleged vendor had no interest in the suit property and further that the dispute concerns the estate of a deceased person, yet the Respondents do not hold letters of administration to the said estate. They argue that the trial court dismissed the suit on the basis that the Respondents lacked the legal capacity to be sued.
35. From the material before this Court, it is not in dispute that the alleged vendor is deceased and that issues relating to the administration of his estate appear to be pending before the succession court. The question of whether the deceased had a transferable interest in the land and whether the Applicant acquired any enforceable rights from the alleged transaction are matters that fall squarely for determination in the intended appeal.
36. Without making any definitive findings at this stage, the Court is satisfied that the draft Memorandum of Appeal raises issues that cannot be said to be frivolous and which merit consideration by the appellate court.

Whether the Appeal Would Be Rendered Nugatory

37. The Applicant has deposed that he has been in occupation of the suit property for about ten years and that the land constitutes his primary source of livelihood as he has been cultivating it. He has also alleged that the Respondents have attempted to interfere with his occupation and that there are intentions to subdivide the land.
38. The Respondents deny that the Applicant is in occupation of the land and instead accuse him of attempting to trespass onto their property.
39. At this stage, the Court is not required to make definitive findings on the competing claims of possession. However, it is apparent that the dispute relates to occupation and use of land, and there is a real risk that the character of the property may change before the intended appeal is heard and determined.
40. If the lands were to be subdivided or the Applicant evicted before the appeal is heard, the substratum of the appeal may be substantially altered.
41. In the circumstances, the Court is persuaded that it is necessary to preserve the status quo pending the hearing and determination of the intended appeal.
42. In the result, the Court finds merit in the application and makes the following orders:
1. Pending the hearing and determination of the intended appeal, the parties shall maintain the status quo obtaining on the suit property being two (2) acres out of L.R. Nyeri/Endarasha/590.



2. For the avoidance of doubt, neither party shall evict, interfere with, alienate, subdivide, or otherwise deal with the portion of the land that is the subject of the dispute pending the hearing and determination of the appeal.
3. The Applicant shall take all necessary steps to file and prosecute the appeal without undue delay.
4. Costs of the application shall abide the outcome of the appeal.

DELIVERED, DATED AND SIGNED VIA MICROSOFT TEAMS THIS 12TH DAY OF MARCH, 2026.

HON. L. G. KIMANI

JUDGE ENVIRONMENT AND LAND COURT

The Ruling is read in the presence of-

Jamrick W. Muriuki the Applicant in person

Wabandi Gacheru for the 1-10th Respondents

