

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: TUIYOTT, NDERI & LILAN, JJ.A.)

CIVIL APPLICATION NO. NAI E632 OF

2025 BETWEEN

ESTHER WANJA WARUI 1ST
APPLICANT STEPHEN MUSELI NGUMBI.....2ND
APPLICANT
JOSEPH KENNEDY OMANYALA 3RD
APPLICANT HALIMA IBRAHIM MOHAMED.....4TH
APPLICANT
JAMES WAMBUI 5TH
APPLICANT JOSPHAT MASAAI KAMANDE
6TH APPLICANT ABDNEGO MSEMBI WILLY.....7TH
APPLICANT

AND

HASSAN SHABA ADAN 1ST
RESPONDENT DANIEL KIPKORIR KOECH.....2ND
RESPONDENT
LUCY WANJIRU GACHARI.....3RD RESPONDENT
THE LAND REGISTRAR, KAJIADO.....4TH RESPONDENT
THE ATTORNEY GENERAL 5TH
RESPONDENT AMOS KYONDU NGUMBI.....6TH
RESPONDENT

*(Being an application seeking temporary stay of orders from the ruling of the Environment and Land Court of Kenya at Kajiado (**M.D. Mwangi, J.**) dated and delivered on 16th day of October 2025*

in

**ELC Case No. 148 of
2018)**

**** RULING OF THE
COURT**

1. The Notice of Motion dated 30th October 2025, was brought before court pursuant, supposedly, to Sections 1A, 1B, and 3A of the Civil

Procedure Act, Order 42 Rules 6(1), (2), (3) and (6), Order 51 of the Civil Procedure Rules, and all other enabling provisions of the law.

2. The applicants seek, in the main, an order of temporary stay of execution and/or compliance with the ruling and consequential orders of the Environment and Land Court at Kajiado (**M.D. Mwangi, J.**) delivered on 16th October 2025 in **ELC Case No. 148 of 2018**, pending the hearing and determination of the intended appeal.
3. The application is premised on two principal grounds the first being that, the applicants have an arguable appeal. They depone that although they had retained counsel to represent them in the trial court, their advocate failed to appear or file any documents, resulting in their case not being heard at all. The applicants contend that this amounted to a denial of fair hearing.
4. In support, the applicants annexed a title deed dated 25th August 2020 and an official search confirming ownership of the suit property, Kajiado/Kitengela/3707, which they maintain was never presented before the trial court. They rely on the well-established principle that the mistake of counsel should not be visited upon a litigant, and submit that the intended appeal raises weighty issues of ownership and fair hearing that merit consideration.

5. Secondly, the applicants urge that unless stay orders are granted, their appeal will be rendered nugatory. They posit that demolitions on the suit property have already taken place, and that subdivision and transfers are currently ongoing.
6. The applicants emphasize that unless the subject matter is preserved, the substratum of the appeal will be lost, leading to irreparable prejudice, including displacement from their homes. They argue that even if the appeal succeeds, it would be of no practical value if the property is fully subdivided and transferred to third parties.
7. The application is supported by the affidavit of Joseph Kennedy Omanyala, sworn on 30th October 2025, together with another affidavit sworn by Hassan Shaban Adan, both reiterating the above grounds and annexing documentary evidence. The applicants therefore urge this Court to preserve the suit property to safeguard their constitutional right of appeal under Article 50 of the Constitution.
8. The matter was heard by way of both written and oral submissions.

When it came up for hearing on 23rd February 2026, learned counsel **Mr. Mukamani**, holding brief for **Mr. Wanyama**, appeared for the applicants. Counsel restated the grounds set

out in the application,

stressing that demolitions had already taken place and subdivision and transfers were ongoing. He urged the Court to preserve the subject matter to avoid rendering the intended appeal nugatory, and highlighted the annexed documentary evidence, including the title deed of 25th August 2020 and the official search, which had not been presented before the trial court due to counsel's failure to act. He submitted that this amounted to a denial of fair hearing and that the intended appeal raised weighty and arguable issues.

9. On their part, the respondents, though served, did not file substantive responses. The Court noted that an affidavit of service dated 15th December 2025 had been filed, albeit late, and after clarification allowed counsel for the applicants to proceed.
10. This Court derives its jurisdiction to grant orders of stay or injunction pending appeal from Rule 5(2)(b) of the Court of Appeal Rules. The principles governing the exercise of this jurisdiction are well settled. In ***Stanley Kangethe Kinyanjui v. Tony Ketter & 5 Others*** [2013] eKLR, at paragraph 9, the Court stated that: -

“The jurisdiction of the Court under Rule 5(2)(b) is original and discretionary. It is not an appeal from the judge’s discretion. The Court has to be satisfied that the appeal or intended appeal is not frivolous, and secondly, that if stay or injunction is not

granted, and the appeal or intended appeal, were it to succeed, would be rendered nugatory.”

11. Similarly, in ***Reliance Bank Ltd v. Norlake Investments Ltd*** [2002] 1 EA 227, the Court emphasized that both limbs, that is, the existence of an arguable appeal and the risk of the appeal being rendered nugatory must be satisfied before relief can issue.
12. Guided by these authorities, the issues for determination in this application are whether the applicants have demonstrated that their intended appeal is arguable, and whether they have shown that unless stay orders are granted, the appeal will be rendered nugatory.
13. On the first issue, an arguable appeal need not necessarily succeed but must raise at least one bona fide issue deserving consideration. The applicants contend that they were denied a fair hearing in the trial court because their advocate failed to appear or file documents, resulting in their case not being heard at all. They annexed a title deed dated 25th August 2020 and an official search confirming ownership of the suit property, Kajiado/Kitengela/3707, which they maintain was never presented before the trial court. The question of whether they were denied a fair hearing, coupled with the issue of ownership of the suit property, are weighty matters that cannot be dismissed as frivolous. We are therefore satisfied that the

intended appeal raises arguable points.

14. On the second issue, the applicants have demonstrated that demolitions on the suit property have already taken place, and that subdivision and transfers are ongoing. If the property is fully subdivided and transferred to third parties, even a successful appeal would be of no practical value. The substratum of the appeal would be lost, and the applicants would suffer irreparable prejudice, including displacement from their homes.
15. We are persuaded that unless the subject matter is preserved, the intended appeal will indeed be rendered nugatory.
16. In conclusion, the court having considered the application, affidavits, and submissions, and applying the principles under Rule 5(2)(b), is satisfied that the applicants have met the twin requirements of demonstrating an arguable appeal and showing that the appeal would be rendered nugatory if stay is not granted.
17. We note that the applicant in his Notice of Motion does not invoke the jurisdiction of this court under rule 5 (2} (b). Since it is clear from the application what it seeks, we treat it as if it was brought under rule 5(2)(b) as was similarly held by this court in ***Jane Muthoni Mberere vs David Oyetu Kamau (Civil Application No. 212 of 2020)*** where the court when faced with similar situation had resolved it in the following words:

“Be it as it may, we shall treat the application as if it was brought under rule 5(2)(b) of this court’s rules since from the body of the application it is clear as to what the applicant seeks.”

18. Accordingly, the Notice of Motion dated 30th October 2025 is allowed.

There shall be a temporary stay of execution and/or compliance with the ruling and orders of the Environment and Land Court at Kajiado (M.D. Mwangi, J.) delivered on 16th October 2025 in ELC Case No. 148 of 2018, pending the hearing and determination of the intended appeal.

19. The applicants shall file and serve the substantive appeal within the timelines prescribed by law, and costs of the application shall abide the outcome of the appeal.

Dated and delivered at Nairobi this 25th day of March 2026.

F. TUIYOTT

.....
JUDGE OF APPEAL

M. NDUMA

.....
JUDGE OF APPEAL

P. LILAN

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.