



**Hoking (Kenya) Real Estate Co Limited v Geogopoulou (Formerly Stavroula Rousalis) & another
(Civil Appeal (Application) E650 of 2025) [2026] KECA 831 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 831 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E650 OF 2025
DK MUSINGA, P LILAN & JO OKELLO, JJA
APRIL 30, 2026**

BETWEEN

HOKING (KENYA) REAL ESTATE CO LIMITED APPELLANT

AND

**STAVROULA GEOGOPOULOU (FORMERLY STAVROULA
ROUSALIS) RESPONDENT**

AND

DENANCY INVESTMENT LIMITED PROPOSED RESPONDENT

(Being an application for joinder of Denancy Investment Limited as a party to the proceedings and for stay of execution of the judgment of the Environment and Land Court at Makueni (Murigi, J.) delivered on 7th May 2025 in ELC Case No. 86 of 2019)

RULING

1. Before this Court is a Notice of Motion dated 22nd January 2026 brought under sections 3A and 3B of the [Appellate Jurisdiction Act](#), rule 5(2)(b) of the Rules of this Court, and Article 159(2)(d) of [the Constitution](#). The main orders sought in the application are: joinder of Denancy Investment Limited as the 2nd respondent in the appeal; a stay of execution of the judgment and decree of the Environment and Land Court delivered on 7th May 2025; and injunctive orders restraining the respondent from evicting the applicant, demolishing or interfering with the applicant's structures, or otherwise disrupting the applicant's possession and occupation of L.R No. 12715/595, Syokimau, pending the hearing and determination of the appeal and the intended cross-appeal. The applicant also seeks that its draft notice of cross-appeal be deemed duly filed upon payment of fees.
2. The brief background is that a dispute arose concerning ownership of two parcels of land known as L.R No. 12715/5X5 (Grant No. I.R 4XX82) and L.R No. 12715/6X2 (Grant No. I.R 4XX64), and the validity of a chain of transactions through which Hoking (Kenya) Real Estate Co. Limited (the



main appellant) (hereinafter referred to as “Hoking”) and Denancy Investment Limited (the applicant herein) (hereinafter referred to as “Denancy”) claimed title. Stavroula Geoegopoulou (the respondent herein) (hereinafter referred to as “Stavroula”) challenged as forgeries the sale agreement dated 29th January 2007 and transfer dated 8th May 2007 as well as the subsequent sale agreement dated 26th November 2009 and transfer dated 3rd March 2010 relating to L.R No. 12715/5X5. She also impugned the issuance of Grant No. I.R 14XX81 on 22nd January 2013 and its subsequent dealings, including the transfer to Hoking on 19th January 2015 in respect of L.R No. 12715/6X2.

3. The record reflects that Denancy was the 1st defendant in the suit before the trial court to wit, Machakos ELC Case No. 86 of 2016. As per the judgment of the trial court, save for filing a statement of defence dated 22nd March 2016, Denancy did not attend the hearing nor call any witness in support of its case.
4. In the impugned judgment, the trial court found that the 2007 and 2010 transactions over L.R No. 12715/5X5 were founded on forged signatures and a fraudulent power of attorney, and were therefore null and void. It further held that Grant No. I.R 14XX81 (issued on 22nd January 2013) and all subsequent transactions, including the transfer of 19th January 2015, were fraudulently procured and incapable of conferring valid title.
5. Accordingly, the court declared Stavroula the lawful owner of both L.R No. 12715/5X5 and L.R No. 12715/6X2, nullified all impugned agreements, transfers, and titles, and ordered cancellation and rectification of the registers. It rejected Hoking’s claim to bona fide purchaser status, found that Denancy’s title was equally rooted in fraud, and ordered eviction and permanent injunction against both Hoking and Denancy.
6. In this application which is supported by the grounds appearing on the face thereof and in the affidavit in support sworn by one of its directors, Abdirashid Abdul Sharifow, Denancy asserts that it has been in open, continuous, and uninterrupted possession of the suit property for over 17 years during which it has developed permanent structures, offices, and employee housing. It avers that although it had filed a defence in the trial court, the matter proceeded to hearing on 20th November 2024 in its absence, culminating in the judgment of 7th May 2025 allegedly condemning it unheard and exposing it to eviction. It therefore maintains that it is a necessary party to the appeal whose joinder is essential for the effective determination of the dispute.
7. As to whether the intended appeal is arguable, it contends that the notice of cross appeal raises arguable issues particularly on violation of its right to a fair hearing and whether adverse findings can be made against a party not heard.
8. On the nugatory aspect, the applicant contends that unless this Court grants stay of execution and the injunctive relief sought, the appeal will be rendered nugatory as the substratum of the dispute will be destroyed. It states that execution has already commenced and there is a real and imminent threat of eviction from L.R No. 12715/595, together with demolition of permanent structures, displacement of employees, and disruption of ongoing business operations. It emphasizes that such actions, once carried out, cannot be reversed even if the appeal ultimately succeeds. It further asserts that the loss it stands to suffer is irreparable and not capable of adequate compensation by damages, given its long-standing possession and substantial developments on the property. It maintains that preserving the status quo pending appeal is necessary to safeguard the subject matter of the dispute, and that failure to do so would render the appeal merely academic and illusory.
9. The application is opposed by Stavroula vide a replying affidavit sworn on her behalf by Kishore Nanji, her advocate on record. He depones that he was served with a similar application filed by Denancy in the trial court seeking, inter alia, stay of execution and setting aside of the judgment delivered on 7th



May 2025. He notes that the application in the trial court came up for directions before the learned judge, who directed the filing of further affidavits and submissions.

10. On the substance of the present application, it is deponed that the application is incompetent and improperly before this Court. In particular, it is deponed that the application under rule 5(2)(b) is not anchored on a valid notice of appeal demonstrating the applicant's intention to appeal against the impugned judgment and is therefore jurisdictionally defective. It is further contended that the applicant cannot properly pursue a cross-appeal in the manner proposed, especially where it seeks to challenge another respondent without independently lodging its own appeal.
11. The deponent also questions the consistency of the applicant's approach noting that while the applicant seeks to challenge the judgment through a cross-appeal, it has at the same time moved the trial court to set aside the same judgment which is procedurally incongruent.
12. In conclusion, the respondent maintains that this application lacks merit, is procedurally defective, and should be struck out or dismissed with costs.
13. At the hearing of this application, learned counsel Mr. Nyamwaro appeared for Denancy, Mr. Munyoro appeared for Hoking, while Ms. Mulongo held brief for Mr. Nanji for Stavroula. Save for Mr. Munyoro who indicated that he did not oppose the application in principle, the other two counsel made brief oral highlights in support of their respective written submissions.
14. On his part, Mr. Nyamwaro reiterated that his client had been in occupation of the suit property for over 17 years and had filed a defence in the trial court but was not afforded an opportunity to be heard before judgment was delivered. He contended that the applicant had a direct and substantial interest in the subject matter and ought to be joined. On the rule 5(2)(b) threshold, he submitted that the intended appeal and cross-appeal were arguable, raising issues on the doctrine of bona fide purchaser and violation of the right to a fair hearing. On the nugatory aspect, he argued that eviction after long occupation would occasion irreparable loss not compensable by damages.
15. In response to a question from the Court on whether his client had filed a notice of appeal to properly invoke the Court's jurisdiction, counsel was unable to immediately confirm its date, stating he would need to verify from the record. On the issue of the existence of parallel proceedings in the trial court and allegations of forum shopping, counsel stated that the applicant had initially moved the trial court upon discovering the judgment but later approached this Court to regularize its position and avoid conflicting decisions.
16. On the issue of participation in the trial court, counsel acknowledged that an adjournment had been sought on 22nd November 2022, but explained that the advocate who appeared had not properly come on record or pursued the defence thereafter. He maintained that the applicant had not been effectively heard.
17. In opposition, Ms. Mulongo reiterated that the application was incompetent for want of a valid notice of appeal, and opined that reliance on an 'unfiled' draft cross-appeal could not invoke this Court's jurisdiction under rule 5(2)(b). She further submitted that the applicant could not seek substantive relief before being formally joined as a party. Counsel contended there was nothing arguable in the intended appeal, and emphasized that the applicant had not been candid as the record showed that its counsel was present during the trial proceedings, sought an adjournment which was declined, and thereafter failed to participate. She explained that the matter proceeded after the court declined the adjournment and that any claim of being unheard was misleading. She also submitted that the applicant was engaging in forum shopping by simultaneously seeking to set aside the judgment in the trial court while seeking stay before this Court.



18. We have considered the application, the affidavits, the rival submissions and the law. It is trite law that in an application under rule 5(2)(b), the applicant must demonstrate, first, that the intended appeal is arguable, and secondly, that unless the orders sought are granted, the appeal, if successful, will be rendered nugatory. See *Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR. However, before we interrogate those twin principles, we must first be satisfied that the jurisdiction of this Court has been properly invoked.
19. The starting point, in our view, is the law governing the institution of appeals. Under rule 77(1) of the Rules of this Court, a person who desires to appeal is required to give notice in writing, which shall be lodged in duplicate with the registrar of the superior court within fourteen (14) days of the date of the decision intended to be appealed against. That notice of appeal signifies an intention to appeal and triggers the appellate process.
20. In addition, rule 95 (1) and (2) of the Rules of this Court provide that a respondent who wishes to contend that the decision of the superior court should be varied or reversed must give notice of cross-appeal, which shall be lodged within thirty (30) days after service of the memorandum and record of appeal, or not less than thirty (30) days before the hearing of the appeal, whichever is the later. These provisions, in our view, make it clear that both a notice of appeal and a notice of cross-appeal are formal processes that must be duly filed in accordance with the Rules before a party can properly invoke the jurisdiction of this Court.
21. As to whether failure by the applicant to file a notice of appeal is fatal, we reiterate, as has been said by this court many times that a notice of appeal is the jurisdictional foundation for any application under rule 5(2)(b). In *Safaricom Limited v Ocean View Beach Hotel Limited & 2 Others* [2010] eKLR, the Court held thus:

“Under Rule 5 (2) (b), the Court is entitled to give a preservative order where a notice of appeal has been lodged. It has been said time without number that in an application under Rule 5 (2) (b) what gives the Court the jurisdiction to hear and determine the motion is the filing of the notice of appeal.” [Emphasis added]
22. Similarly, in *Equity Bank Limited v West Link Mbo Limited* [2013] KECA 320 (KLR), this Court emphasized that without a valid notice of appeal, there is no basis upon which the Court can exercise its jurisdiction under rule 5(2)(b). In the present case, despite being specifically asked by the Court, counsel for the Denancy was unable to confirm the existence or the date of any notice of appeal filed by his client. In the absence of such notice, this Court’s jurisdiction has not been properly invoked.
23. The applicant has sought to rely on a draft notice of cross-appeal annexed to the affidavit in support of its application. The question that arises is whether such a draft cross-appeal can suffice so as to invoke jurisdiction of this Court. In our view, it cannot. Rule 95 of the Rules of this Court contemplates a duly lodged notice of cross-appeal, not a draft annexed to an application. A cross-appeal is not an independent initiating process; it is contingent upon and must be anchored on a properly instituted appeal and must itself be formally filed within the timelines prescribed. A draft, notice of cross-appeal which is not filed remains a mere intention and cannot be equated to a notice of appeal or a properly lodged cross-appeal. Accordingly, the applicant’s reliance on a draft notice of cross-appeal does not cure the absence of a valid notice of appeal.
24. A further issue arises as to whether the applicant, not being a party to the appeal, can seek substantive orders under rule 5(2)(b) prior to being formally joined. The general principle is that only a party properly before the Court can seek substantive relief. In *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2014] eKLR, the Court emphasized that a party must first demonstrate a



sufficient stake in the matter to warrant its joinder and that it is only upon such joinder that the party can properly participate in the proceedings and seek relief. In the present matter, the applicant has combined prayers for joinder with substantive prayers for stay and injunction. While the Court may, in appropriate circumstances, consider such prayers together, the substantive reliefs under rule 5(2)(b) cannot, in our view, be granted in favour of a party who has not first been properly joined in the proceedings. Therefore, until joinder is effected, the applicant lacks the requisite standing to invoke this Court's discretionary jurisdiction for interim relief under rule 5(2)(b).

25. That said, we are satisfied that the prayer for joinder stands on a different footing. It is not disputed that the applicant was the 1st defendant in the proceedings before the trial court and that the impugned judgment made substantive findings against it, including orders requiring it to vacate from the suit property. The applicant therefore has a direct and proximate interest in the subject matter of the appeal.
26. Therefore, as per the decision of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* (supra), we are satisfied that the applicant has demonstrated that it has a stake in the proceedings and that its presence is necessary for the complete and effectual determination of the issues in controversy. In the circumstances, and given that the judgment appealed from directly affects the applicant's rights and interests, we are satisfied that the applicant meets this threshold.
27. Accordingly, we allow the prayer for joinder and direct that Denancy Investment Limited be and is hereby joined as the 2nd respondent in the appeal instituted by Hoking.
28. However, and without prejudice to the foregoing, the joinder of the applicant does not cure the jurisdictional defects identified in respect of the prayers for stay of execution and the injunctive relief. As already stated, the invocation of this Court's jurisdiction under rule 5(2)(b) is contingent upon the existence of a valid notice of appeal which has not been demonstrated in this case. Further, we reiterate that the reliance on a draft notice of cross-appeal is insufficient for purposes of invoking that jurisdiction.
29. In the circumstances, the prayers for stay of execution, injunction, and for deeming the draft notice of cross-appeal as duly filed are hereby declined. Each party shall bear its own costs of this application.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

D. K. MUSINGA (PRESIDENT)

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JUDGE OF APPEAL

PAUL LILAN

.....

JUDGE OF APPEAL

DR. JOHNSON OKELLO

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR .

