



**Kariuki & another v Matulu & another (Suing as the Administrators
of the Estate of the Late Mkuthi Ngovi) (Civil Application
E697 of 2025) [2026] KECA 842 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 842 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E697 OF 2025
DK MUSINGA, MN NDUMA & LM NJUGUNA, JJA
APRIL 30, 2026**

BETWEEN

GEORGE NGURE KARIUKI 1ST APPLICANT

JANE NJOKI KARIUKI 2ND APPLICANT

AND

SIMON KASYOKI MATULU 1ST RESPONDENT

BENEDICT SIKUKU MATULU 2ND RESPONDENT

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE MKUTHI
NGOVI**

*(Being an application for stay of the entire Ruling and Orders of the Environment and Land
Court at Machakos (Koross, J.) delivered on 7th October, 2025 in ELC Case No. E015 of 2020)*

RULING

1. The applicants, George Nguni Kariuki and Jane Njoki Kariuki, have moved this Court by way of a Notice of Motion dated 20th November 2025, brought under rule 5(2)(b) of the Court of Appeal Rules, 2022 seeking the following orders:
 1. Spent.
 2. That pending the hearing and determination of this Application, the Honourable Court do grant stay of proceedings in Machakos Environment and Land Court Case No. E015 of 2020.
 3. That pending the hearing and determination of the substantive appeal, the Honourable Court do grant stay of proceedings in Machakos Environment and Land Court Case No. E015 of 2020.



4. That the costs of this application be provided for.
2. The application is premised on grounds that the applicants filed an application dated 13th July 2023 at the Environment and Land Court in Machakos, seeking setting aside of the proceedings of 11th May 2022 and 3rd October 2022. That in the said application, the applicants also sought to have the trial court recall the respondents herein for cross-examination by the applicants. Further, the applicants aver that they also made a prayer for enlargement of time within which they would file written statements, list and bundle of documents in support of their defence in the trial court.
3. That the learned Judge found no merit in that application and dismissed it with costs vide a ruling delivered on 7th October 2025. The trial court then proceeded to issue further directions for the mention of the suit on 24th November 2025 for fixing a hearing date.
4. In support of the application, the 1st applicant swore an affidavit dated 20th November 2025, in which he reiterated the grounds set out in the application. The applicants further contend that the respondents and interested parties will not suffer prejudice if the prayers sought are granted. They urge that this appeal, if successful, will be rendered nugatory if the orders sought are not granted, as the respondents may proceed with further steps in the suit, causing them prejudice and irreparable harm. They assert that their appeal has a high chance of success, citing that this Court has settled the issue of the right of a party to be heard.
5. The application is unopposed.
6. The application was canvassed through the written submissions of the applicants.
7. Submissions by the applicants are based on the principles enunciated by this Court in Stanley Kinyanjui vs. Tony Ketter & 5 Others (2013) eKLR on the twin principles for consideration in an application for stay of execution, an injunction, or a stay of further proceedings pending appeal.
8. On whether the appeal is arguable, the applicants submit that they filed a Notice of Appeal dated 14th October 2025, wherein they have raised arguable issues of law and facts. They submit that the applicants were denied their right to be heard based on an alleged non-compliance with the court's pre-trial directions. The applicants fault the learned Judge for failing to order the recall of the Plaintiffs and their witnesses for cross-examination, and for failing to order that the matter starts de novo. According to the applicants, the learned Judge also failed to consider their written submissions and evidence adduced in the trial court.
9. They further contend that the impugned ruling will cause irreparable harm to third parties, consisting of 49 families who are likely to face the risk of eviction. That, on the authority of the Board of Governors, Moi High School, Kabarak & Anor vs. Malcom Bell (2013) eKLR, the Supreme Court affirmed that public interest is a relevant factor that would warrant safeguarding the subject matter of an appeal pending resolution of contested issues.
10. On the nugatory aspect, the applicants submitted that they would be prejudiced if the orders sought are not granted, as the hearing of the Plaintiff's case (the respondents herein) is set for further hearing on 20th April 2026, while the applicants do not have their documents on record.
11. At this stage, the Court is only concerned with whether it should stay proceedings before the trial court during the pendency of the present appeal.
12. The application is premised on the twin principles of rule 5(2)(b) of the Court of Appeal Rules, namely, that the applicant must demonstrate that he has an arguable appeal, that is, it is not frivolous,



and secondly, that the appeal, if successful, will be rendered nugatory if an injunction or stay of proceedings is not granted.

13. For an applicant to benefit from the discretion of this Court, he/she must demonstrate both limbs to the Court's satisfaction. On the first principle, as to whether or not the appeal is arguable, the Court has to consider whether there is at least a single bona fide arguable ground that has been raised by the applicant to warrant ventilation before this Court. See *Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others* (supra), where the Court explained that an arguable appeal is not one that must succeed, but one that raises at least a single bona fide point deserving of full judicial consideration.
14. In this case, the applicants intend to argue that the learned Judge erred in failing to order the recall of the respondents and their witnesses for cross-examination in the trial court and ordering the matter to start de novo, resulting in an injustice against them. Additionally, the applicants lament that the learned Judge erred in failing to grant their prayer for enlargement of time for filing their witness statements, list, and bundle of documents, thereby denying them the right to be heard under Article 50 of *the Constitution* of Kenya.
15. On the nugatory aspect, the Court must be satisfied that without an order for stay of proceedings, the very essence of the appeal will be lost, or the appellant will be subjected to irreversible prejudice. The applicants must demonstrate that, unless proceedings in the Environment and Land Court are halted, their appeal will be rendered nugatory. In this case, the applicants assert that if the hearing scheduled on 26th April 2026, proceeds, the substratum of this appeal will be lost.
16. On whether the application meets the threshold for stay of proceedings, we are alive to the principles governing the same, which are well settled. It is trite that stay of proceedings is discretionary and may only be granted in exceptional circumstances. This is so because an order staying proceedings has the effect of derailing the pending proceedings before a final determination is made in the matter. It interferes with the hearing schedules of the trial court and may lead to injustice being occasioned to the respondent, whose constitutional right under Article 159(2)(d) may thereby be curtailed.
17. The power to stay proceedings before a trial court pending appeal is a discretionary power exercisable by the court upon consideration of the facts and circumstances of each case, as was stated by this Court in *David Morton Silverstein vs Atsango Chesoni* (2002) eKLR:

“The Court is not laying down any principle that no order for stay of proceedings will ever be made; that would be contrary to the provisions of rule 5 (2) (b) of the Court's own rules. But as the court pointed out in the case we have already cited, each case must depend on its own facts...”
18. Additionally, in *Bulle vs. Mehta International Ltd & Another* [2023] KECA 554 (KLR), this Court referenced the High Court decision in *Kenya Wildlife Service vs. James Mutembei* [2019] eKLR, where Gikonyo, J. held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay, and overall, the right to a fair trial. Therefore, the test for stay of proceedings is high and stringent.”
19. In this case, should a stay of proceedings be denied, the hearing of the suit will proceed before the trial court on 20th April 2026, while the applicants do not have their documents on record, rendering the present appeal nugatory. This assertion has not been rebutted.



20. We have also looked at the draft memorandum of appeal and the grounds set out therein. The appeal is arguable, and it cannot be said to be frivolous. It is only fair that the applicants are granted a chance to ventilate it.
21. From the foregoing, it is our considered view that the applicants' application has merit and the same is allowed in terms of prayer 3 thereof. The costs of the application shall abide the outcome of the intended appeal.
22. Orders accordingly.

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

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

NDUMA NDERI

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JUDGE OF APPEAL

L. NJUGUNA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

