

**IN THE COURT OF
APPEAL AT
NAIROBI**

**(CORAM: MUSINGA (P), LILAN, & OKELLO,
JJ.A.) CIVIL APPLICATION NO. E758 OF
2025**

BETWEE

**N KOINANGE INVESTMENTS AND
DEVELOPMENT CO. LTD.....APPLICANT**

AND

**IAN KAHIU NGETHE1ST
RESPONDENT NICHOLAS NGETHE
.....2ND RESPONDENT**

**EDDAH GACHUKIA3RD RESPONDENT
RAPHAEL KAMAU NGETH (*Sued as the
personal representatives of the Estate of
Robert Nelson Ngethe (Deceased)*)4TH
RESPONDENT**

*(Being an application for stay of execution of the Ruling of the
High Court of Kenya at Nairobi (Rutto, J.) dated 17th March
2025*

in

Civil Case No. 3164 of 1995

**RULING OF THE
COURT**

1. Before this Court is a Notice of Motion dated 17th December 2025 brought under **rule 5(2)(b)** of the Rules of this Court. The main order sought in the application is as follows:

***That pending the hearing and determination of
the intended appeal, this Court be pleased to***

grant a temporary stay of execution of the Ruling and consequential Orders rendered by Hon. Lady Justice Rhoda Ruto on 17th March 2025 in Milimani HCCC No. 3164 of 1995- Ian Kahiu Ngethe and two others versus Koinange

Investments and Development company Limited so that the Deputy Registrar of the High Court (Commercial Division) does not execute a transfer of the suit property known as LR. No. 209/9099, Nairobi, to the respondents or any other party.

2. The brief background is that the respondents herein moved the High Court vide a notice of motion dated 28th August 2024 seeking to vary an order issued on 19th November 2003 by replacing the named Deputy Registrar, Reuben Nyakundi, with the current Deputy Registrar, Commercial Division of the High Court in Nairobi, to facilitate execution of transfer documents. The respondents argued that the named officer was no longer in office and had since become a Judge, making compliance impossible.
3. In response, the applicant herein strongly opposed the application, contending that there is no procedure for variation of such orders outside the framework of review under **Order 45 of the Civil Procedure Rules**, and that the respondents had failed to demonstrate any error on the face of the record, discovery of new evidence, or sufficient cause. The applicant further contended that the application was brought after an inordinate delay of about 20 years, raised doubts as to the authenticity of the original order due to reconstruction of the court file, and asserted that granting the orders would prejudice and render nugatory pending appeals before this Court.

4. In its ruling delivered on 17th March 2025, the court held that the application was merited and allowed it, finding that the issue was not a substantive error requiring review, but a practical impediment arising from change of office. It rejected the applicant's objections, holding that the orders were properly issued and that the role of Deputy Registrar is statutory and attaches to the office, not the person, and is to be performed by whoever occupies that office at the time. The court invoked its inherent jurisdiction to ensure the ends of justice are met, noting that the order in its current form was incapable of execution and that there were no stay orders in place. It therefore substituted the named individual with the current Deputy Registrar, enabling enforcement of the decree.
5. The applicant, being aggrieved by the ruling, intends to lodge an appeal before this Court as evinced by the notice of appeal dated 17th March 2025.
6. The grounds in support of this application are set out on the face of the application and in the supporting affidavit sworn by **Eddah Wanjiru Mbiyu**, the managing director of the applicant. It is contended that the intended appeal is arguable on grounds that the High Court allowed a variation of the 2003 order without satisfying the threshold for review under section 80 of the Civil Procedure Act and Order 45, there being no error apparent on the face of the record, no discovery of new evidence, and the application having been brought after an inordinate delay of over 20 years. Secondly, the applicant

questions the validity, accuracy and authenticity of the 2003 order, stating it was unaware of its existence and therefore could not verify it. Thirdly, it is contended that the respondents had originally sought and obtained the very order they later moved to vary, thereby raising a legitimate issue as to propriety and consistency. According to the applicant, these issues, taken together, disclose bona fide grounds that are not frivolous and are sufficient to meet the threshold of an arguable appeal.

7. On the nugatory limb, the applicant asserts that unless stay is granted, execution will proceed through the Deputy Registrar, leading to transfer of the suit property (L.R. No. 209/9099). This would not only occasion grave financial loss but also permanently alter the subject matter of the dispute. According to the applicant, such transfer would render the intended appeal as well as the two pending appeals before this Court moot and academic since the substratum of all the disputes is the same property.
8. The application is opposed vide a replying affidavit sworn by **Ian Kahui Ngethe**, one of the personal representatives of the estate of the late Robert Nelson Ngethe. He sets out a detailed history of the dispute, deponing that the deceased entered into a sale agreement with the applicant in 1988 for purchase of a portion of L.R. No. 209/9099, exercised the option to purchase, and paid a deposit which the applicant rejected, prompting the institution of HCCC No. 3164 of 1995 seeking,

inter alia, orders that the agreement was valid and that the applicant be ordered to complete the subdivision of the portions sold to the deceased. Judgment was delivered on 14th October 2002 in favour of the deceased, affirming the validity of the agreement and directing completion of the transaction. Subsequent attempts by the applicant to set aside that judgment were dismissed, including an appeal to this Court (Civil Appeal No. 108 of 2003) which was dismissed. The applicant's attempts to lodge an appeal before the Supreme Court were unsuccessful.

9. It is further deponed that execution proceedings followed, including of the orders issued on 19th November 2003 directing the Deputy Registrar to execute transfer documents, and that although interim stays were granted pending appeals, those appeals were ultimately dismissed, leaving the decree intact and enforceable. He details additional litigation initiated by the applicant, including HCCC No. 278 of 2015 (OS) and Civil Appeal No. 177 of 2016, all of which were unsuccessful, as well as multiple interlocutory applications, culminating in a ruling delivered on 14th October 2021 ordering payment of Kshs. 50,000,000 to the applicant in settlement of the matter. This was followed by multiple further applications and rulings up to 2023.
10. It is deponed that the issue of transfer of the suit property was conclusively determined by the 2002 judgment and has never been set aside, and that the applicant's failure to facilitate

completion, including refusal to provide bank details despite requests necessitated court intervention, leading to deposit of the balance of the purchase price in court in December 2022. The respondents maintain that they have complied with all court orders and that delays in execution have been caused by the applicant's repeated applications and protracted litigation.

11. The deponent further avers that there has never been any stay of the orders directing transfer, that the order of 19th November 2003 remains valid and unchallenged, and that the application culminating in the ruling of 17th March 2025 merely enabled a Deputy Registrar to execute the transfer documents in light of the passage of time and administrative changes. He rejects the applicant's challenge to the authenticity of that order as unmeritorious, and states that the applicant's subsequent application for stay of the said ruling was dismissed on 18th December 2025.
12. Finally, it is deponed that the present application is devoid of merit as the substantive rights of the parties were settled in 2002, leaving only the administrative step of transfer. The respondents therefore contend that the applicant is merely seeking to delay execution of a valid and longstanding decree.
13. At the hearing of this application, learned counsel **Mr. Mbabu** appeared for the applicant, while the respondents were represented by learned counsel **Mr. Mwihuri**. Both counsel briefly highlighted their client's written submissions

which were a reiteration of the different positions summarized

hereinabove. It shall therefore serve no useful purpose to rehash the said arguments.

14. We have considered the application, the affidavits, the rival submissions and the law. It is trite law that in applications of this nature, the applicant must demonstrate, first, that the intended appeal is arguable, and secondly, that unless the orders sought are granted, the appeal will be rendered nugatory. See **Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR.**
15. On arguability, the applicant raises complaints relating to the propriety of the High Court's decision to vary the 2003 order outside the framework of review under Order 45, the alleged inordinate delay of over two decades, and the authenticity of the original order sought to be varied. These issues, on their face, are not entirely idle. We are therefore satisfied that the intended appeal is arguable.
16. However, and without prejudice to the foregoing, the broader context of this dispute cannot be ignored. The record reveals a long and protracted litigation history spanning the High Court, this Court, and the Supreme Court, all revolving around the same suit property, L.R. No. 209/9099, in which the substantive rights of the parties were conclusively determined by the judgment of 14th October 2002. That judgment has never been set aside and has withstood numerous challenges through multiple appeals and applications. The present intended appeal, like several before it, is directed at

interlocutory or consequential orders rather than the foundational judgment itself. In that context, a legitimate question arises whether the issues now raised go beyond a collateral attack on settled matters or simply seek to reopen issues that have already attained finality. Be that as it may, we reiterate that the applicant has, on the face of it, demonstrated that the intended appeal is arguable.

17. Turning to the nugatory aspect, the applicant contends that unless stay is granted, the Deputy Registrar will execute transfer documents, thereby effecting a transfer of the suit property and permanently altering the substratum of the dispute. While that concern is understandable, the circumstances of this case point otherwise. The decree sought to be enforced has remained valid for over two decades and the steps now being taken are simply to give effect to that decree. The key question, in our view, is whether what is sought to be stayed can be reversed or adequately compensated by damages. In this case, even if the transfer proceeds, it is not necessarily irreversible as it can be rescinded and the applicant can be compensated in monetary terms.
18. Further, the applicant's interest is largely financial, relating to the purchase price which has already been deposited in court pursuant to a court order. In the circumstances, we are not persuaded that the applicant will suffer substantial loss, or that the intended appeal will be rendered nugatory if the orders sought are not granted. We are also satisfied that,

should the appeal ultimately succeed, an award of damages would be an adequate remedy.

19. In the end, and since the applicant has only satisfied one of the two limbs necessary for grant of the orders sought under **rule 5(2)(b)**, this application fails and is accordingly dismissed with costs to the respondents.

Dated and delivered at Nairobi this 30th day of April, 2026.

D. K. MUSINGA (PRESIDENT)

.....
**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.