



**Oduor & 61 others v Meritei & 2 others (Civil Application  
E695 of 2025) [2026] KECA 845 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 845 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E695 OF 2025  
DK MUSINGA, MN NDUMA & LM NJUGUNA, JJA  
APRIL 30, 2026**

**BETWEEN**

**MAURICE OUNDO ODUOR & 61 OTHERS & 61 OTHERS ..... APPLICANT**

**AND**

**GEORGE NDULA MERITEI ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application seeking stay of execution from the ruling of the  
Environment and Land Court of Kenya at Kajiado (L. Komingoi, J.) dated  
and delivered on 13th day of November, 2025 in ELC Case No. E002 of 2021)*

**RULING**

1. Before us is an application dated 21<sup>st</sup> November 2025, brought under rule 5 (2) (b) of the Court of Appeal Rules, 2022. The applicants, Maurice Oundo Oduor and 61 others, seek a stay of execution of the Ruling and Orders of the Environment and Land Court at Kajiado (L. Komingoi, J.) delivered on 13<sup>th</sup> November 2025 in ELC Case No. E002 of 2021.
2. The impugned Ruling directed the applicants to vacate parcel Kajiado/Kaputiei North/6386 within thirty (30) days, failing which eviction would ensue with police assistance from the OCS Kitengela. The applicants have since lodged a Notice of Appeal dated 18<sup>th</sup> November 2025 against the said decision.
3. The applicants contend that the thirty (30) days' compliance period is imminently expiring, and execution may be enforced at short notice. They argue that eviction will result in irreparable harm, including demolition of dwellings, permanent dispossession, and loss of livelihood, thereby rendering the intended appeal nugatory.



The applicants posit further that the intended appeal is arguable and raises bona fide grounds of law and fact, including alleged misdirection on review principles under Order 45 of the Civil Procedure Rules, 2010, failure to balance proportionality and hardship in ordering mass eviction of sixty-one (61) persons, and improper direction for police assistance without adequate safeguards. They undertake to preserve the suit property and comply with any preservation or security conditions imposed by the Court.

4. The application is supported by the affidavit of Jacktone Ouma Odunga, the 2<sup>nd</sup> applicant, sworn on 18<sup>th</sup> November 2025. In that affidavit, Odunga deposes that he is duly authorized to swear the affidavit on behalf of himself and the other applicants; that he and the other applicants together with their families occupy the suit land and have established homes, farm plots, and structures thereon; and that the land constitutes their principal place of residence and source of livelihood. He further states that the respondent has indicated an intention to execute the Ruling, with the OCS Kitengela designated to assist in enforcement, and that if execution proceeds, their dwellings will be demolished, possession permanently lost, and restoration impracticable, thereby rendering the appeal nugatory. He emphasizes that the applicants have acted promptly in lodging the Notice of Appeal and presenting this application, and undertake to preserve the suit property pending appeal.
5. The application is opposed by the respondent, George Ndula Meritei, through a replying affidavit dated 28<sup>th</sup> November 2025, wherein he maintains that he is entitled to enjoy the fruits of his judgment and that no sufficient grounds have been demonstrated to warrant interference with the orders of the trial court.

He asserts that the applicants have not demonstrated any exceptional circumstances to justify the grant of stay; that the trial court properly exercised its discretion in ordering vacant possession; and that the appeal, if any, does not raise arguable grounds sufficient to warrant conservatory relief.

6. The respondent emphasizes that the applicants have remained in occupation of the suit property unlawfully, despite judgment having been entered against them, and that continued delay in execution only serves to prejudice his proprietary rights.
7. The matter proceeded by way of both written and oral submissions. The applicants, through submissions dated 2<sup>nd</sup> December 2025, reiterated what had already been deposed in their affidavits: that their appeal is arguable on grounds of misapplication of Order 45 of the Civil Procedure Rules, failure to consider proportionality, and violation of constitutional rights to housing under Article 43. They added that irreparable harm through eviction would materialise if the application is not granted, and relied on authorities including *Mulama & 3 Others vs Viragi* [2025] KECA 647 (KLR) and *Yakub vs Wesonga* [2024] KEELC 6811 (KLR). These submissions essentially restated the grounds in the Notice of Motion and the supporting affidavits.
8. The respondent, through submissions dated 2<sup>nd</sup> December 2025, equally reiterated the position in his replying affidavit: that the intended appeal is not arguable as it rests on the flawed contention that criminal acquittals constitute new evidence for review, whereas the law is settled that criminal and civil proceedings are distinct.

The respondent emphasized that the substantive judgment of 14<sup>th</sup> November 2024 was never appealed against, and the applicants cannot indirectly challenge it through review.

On the nugatory aspect, the respondent submitted that damages or restitution would suffice if the appeal succeeded, stressing his financial ability to comply with any orders. The respondent concluded by pointing out that the applicants were in unlawful occupation of his land.



9. The jurisdiction of this Court in applications under rule 5 (2) (b) is original, discretionary, and unfettered, though it must be exercised judicially and in the interests of justice. In *Stanley Kangethe Kinyanjui vs Tony Ketter & 5 Others* [2013] eKLR, the Court stated:

“The applicant must satisfy both limbs: first, that the appeal is arguable, and second, that the appeal will be rendered nugatory if stay is not granted. An arguable appeal is not one that must necessarily succeed, but one that raises a bona fide point worthy of consideration. The nugatory aspect considers whether, if stay is not granted, the appeal will be rendered worthless, futile, or incapable of being reversed, or whether damages would reasonably compensate the aggrieved party.”

10. The twin principles accordingly guide our determination as to whether the intended appeal is arguable, and whether the intended appeal will be rendered nugatory if stay is not granted.

11. We have considered the submissions by both parties as summarized here above.

We agree with the respondent that the applicants’ intended appeal is directed not against the substantive judgment but against the dismissal of a review application. The law is settled that criminal and civil proceedings are distinct, governed by different standards of proof, and an acquittal in a criminal case does not extinguish civil liability nor invalidate civil findings.

See *Ethics and Anti-Corruption Commission vs Otieno & 5 Others* [2023] KEHC 783 (KLR) .

12. We are not persuaded that the intended appeal raises any bona fide issue worthy of consideration.

13. On the second issue, the applicants argue that eviction will cause irreparable harm that cannot be compensated by damages. The respondent counters that he is financially capable of complying with any orders of this Court, and that the applicants have been in unlawful occupation of his land for years, depriving him of possession and enjoyment. He submits that should the appeal be successful, damages or restitution orders would adequately compensate the applicants.

14. We are persuaded by the respondent’s position. The nugatory principle cuts both ways. While eviction may cause hardship to the applicants, the respondent has a valid judgment in his favour which entitles him to enjoy the fruits thereof.

The applicants have not demonstrated that damages would be inadequate in the circumstances. In *Reliance Bank Ltd vs Norlake Investments Ltd* [2002] 1 EA 227, the Court emphasized that the right of a successful litigant to enjoy the fruits of judgment must be balanced against the right of appeal. In this case, the balance tilts in favour of the respondent.

15. In the result, we find that the applicants have failed to satisfy the twin principles under rule 5 (2) (b) of this Court’s Rules. Accordingly, the notice of motion dated 21<sup>st</sup> November 2025 is dismissed with costs to the respondent.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**D. K. MUSINGA, (PRESIDENT)**

.....

**JUDGE OF APPEAL**

**NDUMA NDERI**



.....  
**JUDGE OF APPEAL**  
**L. NJUGUNA**

.....  
**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

