



Karume v Chief Land Registrar & 2 others; Baraza t/a Siuma Auctioneers (Proposed Interested Party) (Environment and Land Case 816 of 2012) [2025] KEELC 5572 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5572 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 816 OF 2012**

**JG KEMEL, J
JULY 24, 2025**

BETWEEN

RAJAB AHMED KARUME PLAINTIFF

AND

THE CHIEF LAND REGISTRAR 1ST DEFENDANT

THE HON ATTORNEY GENERAL 2ND DEFENDANT

INSURANCE TRAINING & EDUCATION TRUST 3RD DEFENDANT

AND

**ZACHARY BARAZA T/A SIUMA AUCTIONEERS PROPOSED
INTERESTED PARTY**

RULING

(In Respect of the 3rd Defendant/Application dated 5/6/25)

1. Vide the application dated 5/6/25 the Applicant herein moved the Court under Article 159(2) (a) & (d) of *the Constitution* of Kenya (CoK) Sections 1A, 1B & 3A of the *Civil Procedure Act* (CPA) & Rule 51 of the Civil Procedure Rules (CPR), 2010 seeking the following orders; that the Court issue an order;
 - a. joining Zachary Baraza T/A Siuma Auctioneers as an Interested Party for purposes of this Application.
 - b. suspending and/or staying the Order issued on 13th November 2024 in Miscellaneous Application No. E005 of 2024, Zachary Baraza t/a Siuma Auctioneers –vs- Chief Land



Registrar & Others in the Chief Magistrates Court at Milimani pending the hearing and determination of this Application, inter partes.

- c. restraining Zachary Baraza t/a Siuma Auctioneers or any other Auctioneer instructed by the Plaintiff herein from evicting the Applicant, taking possession of or remaining in possession of Land Reference No. 209/10210 (Deed Plan No. 278905) pending the hearing and determination of this Application, inter partes.
 - d. directing the Officer Commanding Langata Police Division and Officer Commanding Akila Police Station to ensure there is no interference whatsoever with the Applicant's possession of Land Reference No. 209/10210 (Deed Plan No. 278905) pending the hearing and determination of the Applicant's Application dated 16th October 2024.
 - e. suspending and/or staying the Order issued on 13th November 2024 in Miscellaneous Application No. E005 of 2024, Zachary Baraza t/a Siuma Auctioneers =vs= Chief Land Registrar & Others in the Chief Magistrates Court at Milimani pending the hearing and determination of the Applicant's Application dated 16th October 2024.
 - f. restraining Zachary Baraza t/a Siuma Auctioneers or any other Auctioneer instructed by the Plaintiff herein from evicting the Applicant, taking possession of or remaining in possession of Land Reference No. 209/10210 (Deed Plan No. 278905) pending the hearing and determination of the Applicant's Application dated 16th October 2024.
 - g. directing the Officer Commanding Langata Police Division and Officer Commanding Akila Police Station to ensure there is no interference whatsoever with the Applicant's possession of Land Reference No. 209/10210 (Deed Plan No. 278905) (suit land) pending the hearing and determination of the Applicant's Application dated 16th October 2024.
 - h. that the Costs arising out of the instant application to be met by the Plaintiff and the Auctioneer/Respondent herein
2. The application is premised on the grounds on the face of it and further supported by the affidavit of Dr. Ben Kajwang, the Executive Director of the Applicant.
 3. He deponed that vide the judgment dated 27/10/22 the Applicant was adjudged as the lawful and valid owner of the suit land.
 4. Aggrieved by the judgment aforesaid, the Plaintiff lodged an appeal vide Court of Appeal E519 of 2020 consolidated with Court of Appeal E515 of 2020 challenging the finding of the ELC Court.
 5. Upon hearing and determining the appeal, the Court of Appeal in its judgment dated the 14/6/24 declared the Plaintiff as the sole and lawful owner of the suit land. In addition, it awarded costs of both the suit and the appeal to the Plaintiff.
 6. Thereafter the Plaintiff filed three applications dated the 20/9/24; 23/9/24 and 9/10/24 seeking orders to have Icon Auctioneers enforce the orders of the Court of Appeal. The Auctioneer sought Police assistance to enforce eviction orders against the Applicant.
 7. To forestall the impending eviction, the Applicant filed an application dated 16/10/24, which application is pending before the Court.
 8. That whilst the applications cited above were pending, the Plaintiff instructed the Proposed Interested Party to undertake eviction of the Applicant. The said Interested Party obtained orders on 13/11/24 in Miscellaneous Application No. E005 of 2024, Zachary Baraza t/a Siuma Auctioneers -vs- Chief



Land Registrar & Others in the Chief Magistrates Court at Milimani ex parte directing the Officer Commanding Station Akila Police Station to provide security during the eviction of the Applicant without any notice and in contravention of the law, despite the Applicant writing to the Interested Party to stop further illegal and unprocedural execution against the Applicant. That to actualize the orders, the Interested Party procured goons and attempted to forcefully evict the Applicant from the premises.

9. The Applicant has challenged the attempted eviction on grounds that; the Plaintiff has not sought the taxation of costs nor leave of the Court to execute the decree in the absence of the former contrary to the provisions of Section 94 of the CPA; Section 152G(1)(b) of the *Land Act* which requires a formal authorization before any eviction is carried out has not been complied with as the Plaintiff has not obtained any authorization nor any eviction orders of the Applicant from the suit land; there are pending applications before this Court and Court of Appeal awaiting determination. Specifically, the ruling of the Court of Appeal in SUPE015 of 2024 – Insurance Training & Education Trust Vs Joseph Ndungu Gathundu & 5 others seeking certification and or leave to appeal to the Supreme Court is scheduled for ruling on 20/6/2025.
10. The Applicant averred that the Plaintiff seeks to steal a match on the Applicant to forcefully and unprocedurally take possession of the suit land and alter its status and deprive the Applicant the use of the land pending the hearing and determination of the application dated 16/10/24.
11. For the above reasons the Court was urged to grant the application in the best interest of justice.

The Plaintiff's Response

12. Responding to the application the Plaintiff filed a Notice of Preliminary objection dated 12/6/25 on the following grounds;
 - a. That this Honourable Court is divested of the requisite jurisdiction to hear and/or entertain the Application. There is no pending or intended Appeal against the alleged Orders dated 13/11/2024 purportedly issued by the Magistrates Court in Miscellaneous Application No. E005 of 2024, Zachary Baraza t/a Siuma Auctioneers vs Chief Land Registrar & Others.
 - b. That the jurisdiction of this Honourable Court to entertain an Application for stay of execution of Orders issued by the lower Court is expressly provided for by the provisions of Order 42 Rule 6 of the Civil Procedure Rules; under the said provisions this Honourable Court's power is limited to granting a stay of execution pending the hearing and determination of an Appeal or an intended Appeal against orders issued by a Lower Court;
 - c. That there are subsisting Orders of Injunction in the nature of a Permanent Injunction inter alia restraining the Applicant whether by themselves their agents employees assigns advocates servants or otherwise howsoever and any' person whatsoever from selling, disposing' of, charging, sub-dividing, processing subtitles or lease, pledging, dealing interfering with and/or intermeddling in any manner whatsoever with all that property known as LR No. 209/102/10 Deed Plan No. 278905) pursuant to grant no. IR 130791 located within Nairobi in the name of Raiab Ahmed Karume.
 - d. That this Honourable Court lacks jurisdiction to override and /or sit on Appeal on a Judgement and Orders of the Court of Appeal.
 - e. That the attempts by the Applicant to interfere with the Plaintiff/Respondent's possession, occupation and/control of the suit property is in utter contempt of the judgement and Orders of the Court of Appeal in *CA No. E505 of 2020*; Joseph Ndungù Gathundu & 3 Others vs



The Chief Land Registrar & 2 Others, & Civil Appeal No. E519 of 2020; Rajab Karume vs The Chief Land Registrar & 5 others.

- f. That the Applicant's title over the suit property having been cancelled pursuant to the Judgement and Orders of the Court of Appeal, the Applicant has no legitimate claim over the suit property or any portion thereof that would warrant any intervention by this Honourable Court in the manner sought or otherwise.
- g. That the Application is a sham, frivolous, vexatious and is an utter abuse of the Court process. In the circumstances it is in the interest of justice and fairness that Application be dismissed with costs.

The Plaintiffs Replying Affidavit

- 13. Rajab Ahmed Karume filed a Replying Affidavit sworn on 12/6/25 where he reiterated the grounds in the Preliminary Objection and added that he is the registered proprietor of the suit land as adjudged by the Court of Appeal, whose judgment has not been appealed, vacated and or set aside and that the instant application is a back door attempt to upset the said judgment and wrestle the possession and / or control of the property in total disregard to the judgement of the Court.
- 14. To that end, he averred that this Court has no jurisdiction to sit on appeal on a decision of the Superior Court. Further that the Interested Party is not a party to the suit and therefore the Court ought not issue orders in vain and in any event the interested party is not in possession of the suit land. That the Applicant ceded possession of the land after the judgment of the Court of Appeal in June 2024 hence no need for eviction. That the truth of the matter is that it is the Applicant who brought hoodlums to invade the land and attack his workers on site but were repulsed.
- 15. He added that the Applicants title over the property having been cancelled pursuant to the judgment of the Court the Applicant has no legitimate claim over the suit property or any portion thereof to warrant any intervention of this Court.
- 16. The deponent also relied on his Replying Affidavit dated 26/11/24 filed in response to the motion dated 16/10/24 and urged the Court to dismiss the application in limine.

The Applicant's Supplementary Affidavit

- 17. Dr. Ben Kajwang swore a supplementary affidavit on the 16/6/25 and avowed that the Plaintiff has engaged in misrepresentation and material concealment of facts in forcefully obtaining possession of the suit property on 6/6/25 contrary to the law.
- 18. That the Applicant has been in possession of the land as acknowledged by the Court of Appeal in E390 of 2020 until the 6/6/25 when the Plaintiff and its agents forcefully gained possession and remain in possession of the suit land in breach of the orders of this Court.
- 19. The deponent decried the conduct of the Plaintiff in obtaining exparte orders on 13/11/24 for eviction to gain possession during the pendency of several applications. That the Plaintiff has taken possession of the land and blocked all sewer systems and access to the college and urged the Court to allow the application.

The Interested Party' Replying Affidavit dated 20/6/25

- 20. In opposing the application, Zachary Baraza, the proposed Interested Party deponed that he is a licenced Auctioneer by profession. In the instant case he stated that he was instructed by the Plaintiff to enforce the lawful judgment and assist in taking possession of the suit premises in line with the



declaration of owners Interested Party by the superior Court. That on the basis of the said instructions given pursuant to a judgement and a valid decree of the Court, he filed Misc. application CMCC No 005 of 2024 seeking Police assistance pursuant to Rule 9 of the Auctioneers Rules. That on 13/11/24 the Court issued orders authorizing the OCS Akila Police Station to provide security during the eviction. That he is yet to commence the execution of the orders. He stated that he has no interest in the suit and any joinder would not be of any benefit to the Court and is totally unnecessary and urged the Court to dismiss the prayer for joinder.

The Plaintiff's Further Replying Affidavit

21. Rajab Ahmed Karume vide a Replying Affidavit sworn on 23/6/25 stated that on 20/6/25 the Court of Appeal delivered its ruling in SUPE015 of 2024 – Insurance Training & Education Trust Vs Joseph Ndungu Gathendu & 5 others dismissing the Applicant's application for certification and leave to file an appeal to the Supreme Court against the judgment delivered on 14/6/24. That in light of the Ruling of the Court the two applications pending before this Court are moot.
22. I have read and considered the written submissions filed by the parties and I thank counsel for their insights.

Analysis and Determination

23. Issues for determination are; whether the Preliminary Objection is merited; if in the negative, whether the application has merit and who meets the cost of the application.

Jurisdiction

24. Before delving into the issues, the background of this dispute is necessary. The subject of this application is the suit land namely LR No 209/10210 Deed Plan No 278905 situate in Bellevue -South C Area of the Nairobi County City.
25. The parties have been litigating for over a decade now. At the ELC, the Court entered judgment in favour of the Applicant. Aggrieved with the decision, the Plaintiff filed an appeal and on determination, the Court of Appeal entered judgement in his favour. This decision triggering the filing of an application in Court of Appeal seeking certification and leave to appeal to the Supreme Court. It is averred that other applications were filed at the ELC Court both by the Plaintiff and the Applicant. While these applications were pending, the Interested party on instruction of the Plaintiff moved the Chief Magistrate Court for orders for Police assistance supervision during the eviction. It is the orders of 13/11/24 that provoked the filing of this application.
26. In any litigation, jurisdiction is central. A Court of law cannot validly take any step without jurisdiction. In the celebrated case of Motor Vessel "Lillian S" (1989) eKLR Nyarangi JA stated that jurisdiction is everything. Without it a Court must down it tools. This decision has been rehashed severally by our Courts. The Court of Appeal in Phoenix of EA Assurance Company Limited Vs. S. M. Thiga T/A Newspaper Service [2019] eKLR held that;

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the Court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate Court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction ...”



27. The Supreme Court in the case of Samuel Kamau Macharia & Another -Vs-Kenya Commercial Bank Ltd & 2 Others (2012) eKLR it was held that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by the law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

28. The objection before the Court revolves around the question as to whether or not this Court has jurisdiction to entertain the application. To that end therefore I find that the Preliminary Objection is a point of law so much so that if it is answered in the affirmative, it determines the application in finality.

29. The application before Court seeks in the main stay of orders dated 13/11/24 issued in Misc. Application No E005 of 2024- Zachary Baraza t/a Siuma Auctioneers Vs Chief Land Registrar & Others. The said orders stated as follows;

“that an order be and is hereby issued directing the OCS, Akila Police Station to accompany supervise and provide security to during the execution of the decree emanating and or issued in Nairobi Court of Appeal No 5050 of 2020.

30. Undoubtedly, the Applicant is aggrieved by the orders of the Lower Court and has moved this Court seeking interlia stay of these orders on grounds that; the Plaintiff has commenced execution contrary to the provisions of Section 94 of the Civil Procedure Act which requires that no decree should be executed until costs have been taxed except in cases where the parties obtain leave of the Court to execute before taxation of costs. That the provisions of Section 152 G of the Land Registration Act requires that there be 90 days’ notice before any execution is carried out. Further that there are pending applications before the Court of Appeal as well as this Court that are yet to be heard and determined.

31. It is trite that this Court enjoys appellate jurisdiction over the Magistrates Court. This Court’s jurisdiction is invoked via an appeal or an Intended Appeal under Section 71A of the Civil Procedure Act which provide that an appeal shall lie to this Court from a decree passed by a Subordinate Court. A party who is aggrieved by the decision of the Magistrates Court may file an appeal in the ELC Court.

32. A party desirous of seeking stay of execution of a judgement or an order of the Court pending appeal may move the Court via an application under the provisions of Order 42 Rule 6 provide as follows;

“[Order 42, rule 6]

1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.



2.
 3. Notwithstanding anything contained in subrule (2), the Court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
 4.
 5. An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 6. Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate Court or tribunal has been complied with.
33. The purpose of stay of execution is to preserve the subject matter of the appeal so as not to render the appeal nugatory or an academic exercise. In this case there is no appeal and or intended appeal from the decision of the Chief Magistrate issued on 13/11/24 and therefore the Court finds that granting of orders of stay of the said orders do not lie in the circumstances of this case.
34. The Applicant has referred the Court to the provisions of Section 34 of the *Civil Procedure Act* which provides that all questions between the parties to the suit in which the decree was passed or their representatives and relating to the execution discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. In the absence of an appeal from the decision/orders of the Subordinate Court issued on 13/11/24, I find that this Court cannot assume jurisdiction over the subordinate Court's orders through the provisions of Section 34 of the *Civil Procedure Act*.
35. Further the Court was urged to grant stay pending the hearing and determination of the Applicant's application date the 16/10/24 which sought stay of execution of the judgement pending the hearing and determination of the application pending in the Court of Appeal which application has now been heard and determined. It is commonly acknowledged that the Court of Appeal rendered its decision on the application for certification and leave to file an appeal on 20/6/2025.
36. The Court takes Judicial Notice of the existing judgment of the Court of Appeal. This Court is bound by the decisions of the Court of Appeal and cannot make any judicial pronouncement whose effect is to interfere with its decision. The Supreme Court in the case of *Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020)* [2022] KESC 62(KLR) (Civ) (7 October 2022) (Judgment stated that the rule of thumb is that Superior Courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those Courts higher than themselves.
37. In the end, I find that the preliminary objection is upheld and consequently the application dated 5/6/25 be and is hereby dismissed with costs.
38. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JULY 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI



JUDGE

Delivered Online in the Presence of:

Mr. Muchoki for the Plaintiff

NA for the 1st – 3rd Defendants.

CA. Nechesah

