

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC APPEAL CASE NO. E038 OF 2025

SAMUEL GICHUKI MUBIA and

LEAH WANJIKU MUBIA

Suing as the legal representatives of the estate of

JOSEPH MUBIA NGUYO (DECEASED)

.....APPELLANTS

VERSUS

DAVID WANJOHI KAHANDO.....1ST

RESPONDENT

LAND REGISTRAR - LAIKIPIA 2ND

RESPONDENT

RULING

1. This suit was filed by way of a memorandum of appeal dated 31.10.2025 where by the appellants formerly the plaintiffs were dissatisfied with the judgment of the trial court delivered on 8.10.2025. The appellants have filed an application dated 4.11.2025 seeking orders of STAY OF EXECUTION of the aforementioned judgment as well as an order of injunction restraining the 1st respondent from

entering, destroying crops cultivating or fencing the suit land L.R. Marmanet/ Melwa Block 1/1226.

- 2.** When the application came up before this court on 6.11.2025, the court gave directions interalia, *“That an order of maintenance of status quo on the ground and registration is hereby issued”*.
- 3.** The 1st respondent filed a replying affidavit dated 8.1.2026 where he has given a historical account of the dispute. He avers that on 4.1.2026, the appellants descended on the suit land cutting down trees and he availed photographs to buttress his claim. He contends that no crops have been planted on the land. The 1st respondent also filed his own application dated 8.1.2026 similarly seeking injunctive orders against the appellants. In particular, he seeks an order restraining the appellants from cutting down trees.
- 4.** I have considered the rival applications and arguments. To grant or not to grant injunctive orders to either of the protagonist is the issue for determination. The provisions of Order 42 Rule 6 of the Civil Procedure Rules stipulates as follows:

“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,.....”

(6) Notwithstanding anything contained in sub rule (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 subordinate Court or tribunal has been complied with. ”

5. Thus, the court dose have the mandate to grant a stay of execution as well as an order of injunction, but such orders are given at the discretion of the court.

6. A perusal of the judgment delivered on 8.10.2025, reveals that no determination regarding how the suit land was being

utilized was made. However, at paragraph 39 of the said judgment, the court stated thus;

“I have considered the evidence on record and find that although the plaintiff has a title in respect to Marmanet/Melwa/1226 the same was improperly obtained without surrender of the earlier title which had been issued to the defendant. Hence his claim for injunction will not succeed but fail at this point”.

7. In the final orders, the only positive orders given were in regard to the order number iv) on rectification of the register, as well as order v) on the injunction against the plaintiff from entering, cultivating or utilizing the suit land. In essence, the claim of the plaintiff was disallowed, which is tantamount to there being no positive orders; See **Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya) [2015] eKLR.**

8. However, in light of the manner in which the trial court framed its final orders, I find that none of the parties should have leverage over the other in so far as the suit land is concerned until the appeal is heard and determined. It

follows that the appropriate orders to give are the orders of maintenance of status quo, which orders this court gave at the infancy stage of this appeal.

9. In the case of **Daniel Kinyanjui Gitau & 227 others v Mary Ruguru Njoroge [2020] eKLR** , the court had this to say on the issue of status quo.

“The Court of Appeal defined what ‘status quo’ means in the case of Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] eKLR as follows:

“Status quo” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events”.

10. Thus in the end, the court extends the order of maintenance of status quo given on 6.11.2026 for a period of ONE YEAR ONLY. For avoidance of doubts the ground status entails that none of the parties shall utilize the suit land in any way, be it cultivating, harvesting trees or cutting them away, otherwise both applications are hereby

dismissed and the costs thereof shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 5th DAY OF MAY 2026 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Bedan - Court Assistant

Gakenia Gacheru holding brief for Waichungo Martin

for the

Appellants

Mugambi for the 1st Respondent

Gisemba for the 2nd Respondent