



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waithira v Nyingi (Environment and Land Appeal E001 of 2026)  
[2026] KEELC 2664 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2664 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E001 OF 2026**

**MN GICHERU, J**

**MAY 5, 2026**

**BETWEEN**

**LUCY WAITHIRA ..... APPELLANT**

**AND**

**MUCHOHI NYINGI ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. Caroline Ndumia, Senior Resident Magistrate, delivered on 10th December 2025 and dated 16th December 2025 at Kangema Law Courts in MCELC No. E007 of 2025)*

**RULING**

1. This ruling is on the notice of motion dated 8-1-2026. The motion which is by the Appellant is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Orders 42 rule 6 and 51 rule 1 of the Civil Procedure Rules, Article 50 of *the Constitution* of Kenya and all enabling provisions of the law.
2. The motion seeks the following residual orders.
  2. A stay of execution of the ruling delivered on 10-12-2025 and dated 16-12-2025 by Kangema Magistrate's Court in MCELC No. E007/2025, Lucy Waithira Gikonyo Muchohi Nyingi, pending the hearing and determination of the appeal.
  3. A stay of all further proceedings arising from or connected to the ruling mentioned above, including any steps taken pursuant thereto, pending the hearing and determination of this appeal.
  4. A stay of the issuance and service of any third party notice including the one dated 10-12-2025 pending the determination of this appeal.
  5. Such interim preservative orders as may be necessary to maintain status quo and prevent prejudice to the Appellant and the intended third party.



3. The motion is based on ten (10) grounds and is supported by the affidavit of the Appellant dated 8-1-2026. The gist of the grounds and the affidavit is as follows. Firstly, the Appellant is aggrieved by the ruling of 16-12-2025 which allowed the Respondent's application for extension of time and leave to issue a third party notice. Earlier on 14-11-2025, the same court had struck out the Respondent's third party notice for non compliance with Order 1 rule 15 of the Civil Procedure Rules and that decision was never appealed against, reviewed or set aside. Secondly the learned trial magistrate erred in law by allowing a fresh application whose effect was to circumvent and defeat the earlier ruling of 14-11-2025 contrary to the principles of finality of decisions, functus officio and orderly administration of justice. The Appellant was not afforded an opportunity to be heard. Thirdly, the intended third party is the Appellant's elderly mother, a non party with no legal or beneficial interest in the suit property having lawfully had the same transferred to the Appellant, and whose joiner is unnecessary, oppressive and legally untenable. Fourthly, unless a stay is urgently granted the appeal will be rendered nugatory as the Respondent will proceed with third party proceedings founded on an impugned and procedurally flawed ruling. For the above and other reasons, the Appellant prays for the orders.
4. The motion is opposed by the Respondent who has sworn a replying affidavit dated 21-1-2026 in which he replies as follows. One, the ruling of the trial court was that, leave to issue a third party notice, was granted. The said notice was issued and served. Two, the third party Leah Wanja Muchohi is yet to enter appearance and there is nothing to stay as the Order of 16-12-2025 has been fully executed. The issues that the Appellant has raised in this motion were well addressed by the trial court. Three, to stay further proceedings in the lower Court while stating that the third party is elderly, sickly and under full nursing care, is not in the interests of justice. One would expect the parties to benefit from a timeous hearing on the case. Four, the application appears predicated on ulterior motives because it seeks to argue the Appellant's case while seeking to gag the third party from being heard. For the above and other reasons, the Respondent prays for the dismissal of the Appellant's motion.
5. Counsel for the parties were to file and serve written submissions by 15-4-2026 but by 28-4-2026, no such submissions had been filed.
6. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit and the available records. I find that the following issues arise.
  - i. Whether the Appellant was entitled to be served with the Application for leave to issue a third party notice to the third party.
  - ii. Whether the Appellant was entitled to be heard before the court considered the second ruling dated 16-12-2025.
  - iii. Whether it matters who the third party is.
  - iv. Whether the Appellant has proved that she stands to suffer any prejudice if the motion is not allowed.
7. Looking at the first issue, I find that the Appellant was not entitled to be served with the application for leave to issue a third party notice to the third party. By its very nature, such an application is by law ex-parte. The Defendant, in third party proceedings is seeking to implicate a third party to come into the case and indemnify him. This has nothing to do with the Plaintiff and the Plaintiff should keep off such proceedings. This is why the proviso to Order 1 rule 15 of the Civil Procedure Rules expressly provides that notice to third parties shall be ex-parte.
8. Regarding the 2<sup>nd</sup> issue, I find that the Appellant was not entitled to be heard before the court considered the second ruling dated 16-12-2025. It was still an affair between the Court, the Respondent



and the third party. It is only after leave is granted by the Court that the Plaintiff can be served with the third party notice. A Plaintiff would therefore have no audience in opposing the issuing of a third party notice. The earliest the Plaintiff can be heard is after the third party enters appearance pursuant to the third party notice. This would be at the stage of summons for directions provided for under Order 1 rule 22 of the Civil Procedure Rules. That is when the Court directs how the questions of liability between third party and the Defendant will be determined. The Plaintiff may also be heard at this stage but not earlier.

9. It is my finding that it is immaterial who the third party is as long as they are not below the age of 18 years or of unsound mind as stipulated in Order 32 of the Civil Procedure Rules. The Plaintiff's mother would therefore be a competent third party in the suit unless the contrary is proved.
10. On the final issue, I find that the Appellant has not proved that she would suffer prejudice if the motion is not allowed. It is expected that at the lower Court, all parties will be accorded a fair hearing as envisaged by Article 50(1) of *the Constitution*.
11. In conclusion and for the reasons already given, I find no merit in the motion dated 8-1-2026 which I dismiss.

Costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 5<sup>TH</sup> DAY OF MAY, 2026.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistants – Jackline and Antony

Appellant's Counsel – Miss Muthi

Respondent's Counsel – Mr. Mbuthia

