



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA E007 OF 2024

FRANCIS D. KINYANJUI1ST APPELLANT
JOSEPH WAIRACHU KINYANJUI2ND APPELLANT
VERSUS
AGNES NYAMBURA.....1ST RESPONDENT
MAINA KINYANJUI.....2ND RESPONDENT
MUCHINA KAMAU.....3RD RESPONDENT

(Being an appeal from the Judgment of the Learned Principal Magistrate, Hon. M. Sudi delivered on 23rd March 2022 in MC Civil Case No. 22 of 2018 at Kandara Law Courts.)

RULING

(1)This ruling is on the notice of motion dated 31-7-2025. The motion which is by the Appellants is brought under Sections **1A,1B,3,,3A** and **63(e)** of the Civil Procedure Act, **Order 22 rule 25**, **Order 42 rule 6**, **Order 51 rule 1** of the Civil Procedure Rules and all other enabling provisions of the law.

The motion seeks the following residual orders.

3. Stay of execution of the judgment delivered on 21-7-2025 and all consequential orders pending the hearing and determination of the appeal to the Court of Appeal.

4. That the costs of this application to abide the outcome of the Appeal.

(2)The motion is based on ten(10) grounds and is supported by the affidavit of the 1st Appellant dated 31-7-2025. The gist of the entire motion is as follows. Firstly, the Appellants are aggrieved by the judgment of this Court dated 21-7-2025 and they have filed a notice of appeal. Secondly, the judgment of this Court is strenuous and forcible upon the Appellants who have been in occupation of the suit parcels. They risk being evicted from the suit parcels. Thirdly, the grounds of appeal are weighty and raise serious issues of law and fact and the appeal has overwhelming chances of success. Fourthly, the application has been

filed without undue delay and the Appellants are ready to comply with any condition imposed by this Court.

(3)The motion is opposed by the Respondents and in this regard, the 3rd Respondent has sworn a replying affidavit dated 5-3-2026 in which he states as follows. One, the Applicants have not demonstrated that they will suffer any substantial loss if the orders sought are not granted and the suit properties are reverting to the name of Fredrick Kimani and the Appellants being beneficiaries of his estate shall be fully involved in the succession proceedings relating to his estate. Two, some of the suit property has reverted to the name of the deceased, Fredrick Kinyanjui Kimani hence the application is overtaken by events.

(4)The only submissions that I see on record are by the Respondent’s counsel. The said submissions are dated 6-3-2026 and they raise two issues.

(a) Whether the orders for stay of execution have been overtaken by events.

(b) Whether the Appellants will suffer substantial loss if the motion is not allowed.

(5)I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit and the written submissions by learned counsel for the Respondent. I find that this being an application for stay of execution pending appeal, Order 42 rule 6(2) of the Civil Procedure Rules is the applicable law to this application.

It provides as follows.

“ (2) No order for stay of execution shall be made under Subrule (1) unless-

(a) The court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”

All the three conditions must be satisfied by the Applicant before the Court allows an order for stay. The use of the word ‘and’ after the word “made” in (a) and also after the semi colon, still in (a) means that the three conditions are conjunctive and not disjunctive.

(6)The above being the case, I frame the issues as follows.

- (i) **Whether the Appellants stand to suffer substantial loss if the application dated 31-7-2025 is not allowed.**
- (ii) **Whether the application dated 31-7-2025 was filed without unreasonable delay.**
- (iii) **Whether the Appellants have given any security for the due performance of such decree or order as may be found binding on them.**

(7) Looking at the 1st issue, I find that the Appellants do not stand to suffer any loss at all. The suit land is not being registered in the names of the Respondents but in the name of the Fredrick Kinyanjui Kimani who is the Appellants father or grandfather. The suit property will be subjected to a succession process where all the parties in this case will have an equal footing in the distribution of the whole estate. The Appellants have nothing to lose. They will not therefore suffer substantial loss or any loss at all.

(8) It is my finding that the motion was filed within ten(10) days of the judgment dated 21-7-2025. There is therefore no unreasonable delay on the part of the Appellants. They were very much on time.

(9) Finally on the third issue, I find that it is not necessary for the Appellants to provide any security for the due performance of such decree or order as may be binding upon them. The suit land is immovable property and should the appeal by the Appellants be dismissed, the land will be available to the Respondents. There is evidence in form of a copy of the register for Loc.4/Gakarara/401 that it has already reverted to the name of Fredrick Kinyanjui Kimani. The suit land is very safe when registered in the name of patriarch of the parties and there is no risk that one party will take advantage of the other.

(10) In conclusion and for the reasons, I find **no merit** in the motion dated 31-7-2025 because the Appellants have not satisfied all the three conditions precedent to the grant of the orders sought. The motion dated 31-7-2025 is dismissed with costs to the Respondents.

Dated, signed and Delivered virtually at Murang'a this 13th day of May, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Antony

Appellant’s Counsel – Mr Tumu

Respondent’s Counsel – Absent