



**Munyi & another v Ileri (Environment and Land Appeal
E054 of 2025) [2026] KEELC 2728 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2728 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E054 OF 2025**

EC CHERONO, J

MAY 7, 2026

BETWEEN

ALFRED MUNYI 1ST APPELLANT

ISIAH NJAGI HOSEA 2ND APPELLANT

AND

ROSEMARY NJURA IRERI RESPONDENT

RULING

Introduction

1. Before this Court for determination is a Notice of Motion Application brought under certificate of urgency dated 18th November, 2025. The Appellants/Applicants seek the following substantive orders: (i) transfer of the appeal from this Court to the High Court at Embu on the ground that it arises from a succession cause; (ii) stay of execution of the judgment and decree of the Senior Resident Magistrate's Court at Runyenjes in Succession Cause No. E163 of 2021; and (iii) prohibitory and preservative orders restraining the Respondent from dealing with Land Parcel No. Kagaari/Kanja/3301 and all resultant subdivisions Kagaari/Kanja/13977–13982 pending the hearing and determination of the appeal.
2. The Application is supported by the affidavit of the 1st Appellant/Applicant sworn on 18th November, 2025, and is opposed by the Respondent through a Replying Affidavit of even date. The parties agreed to have the matter disposed of by way of affidavit evidence and written submissions. The Appellants/Applicants filed submissions dated 11th February, 2026 through their counsel, while the Respondent filed submissions in person dated 19th February, 2026.



Background

3. The 1st Appellant avers that he and the 2nd Appellant were dissatisfied with the judgment and decree of the Principal Magistrate's Court at Runyenjes in Succession Cause No. E163 of 2021 and lodged an appeal, which was mistakenly filed before this Court instead of the High Court. He deposes that after the matter came up before the Deputy Registrar of this Court on 27th October, 2025, and an oral request for transfer was made, the Respondent proceeded to subdivide Land Parcel No. Kagaari/Kanja/3301, which forms part of the deceased's estate, into six (6) new parcels, namely Kagaari/Kanja/13977 to 13982, and had already transferred some of them to third parties. The Applicants contend that unless the Court intervenes, the appeal will be rendered nugatory and they will suffer irreparable loss.
4. The Respondent, in opposition, avers that the decree of the trial court was properly executed after no notice of appeal or application for stay of execution was filed in time. She contends that the execution having been completed, the appeal and the present application have been overtaken by events and are nugatory. She urges the Court to strike out both the application and the appeal in their entirety.

Issues For Determination

5. The following issues fall for determination:
 - i. Whether this Court has jurisdiction to hear and determine the present appeal, and if not, whether a transfer to the High Court is warranted.
 - ii. Whether the Applicants are entitled to a stay of execution of the decree of the trial court.
 - iii. Whether prohibitory and preservative orders should issue over the suit property and its resultant subdivisions.

Analysis And Determination

6. The preliminary and most fundamental issue is whether this Court has jurisdiction to entertain an appeal arising from Succession Cause No. E163 of 2021 determined by the Principal Magistrate's Court at Runyenjes.
7. The answer is in the negative. The *Law of Succession Act* (Cap. 160, Laws of Kenya) vests appellate jurisdiction over magistrates' court succession decisions in the High Court. Section 47 of the *Law of Succession Act* grants the High Court supervisory and appellate oversight over succession proceedings. Article 165(3)(a) of *the Constitution* of Kenya, 2010, confers on the High Court unlimited original jurisdiction in civil and criminal matters, and by extension, appellate jurisdiction in succession matters under the statutory framework. The Environment and Land Court, created by Section 4 of the *Environment and Land Court Act* (No. 19 of 2011), has specialized jurisdiction confined to disputes relating to the environment and land. While a succession cause may incidentally involve land, the primary proceedings before the trial court were a succession cause, not a land dispute. Accordingly, this Court lacks appellate jurisdiction over the matter.
8. The Appellants readily concede the error and attribute it to inadvertence. This Court agrees that procedural technicalities should not be allowed to defeat substantive justice. The Supreme Court of Kenya and appellate courts have consistently held that courts ought to lean in favour of hearing disputes on their merits rather than dismissing them on procedural grounds. Article 159(2)(d) of *the Constitution* mandates that justice shall be administered without undue regard to procedural technicalities.



9. More pertinently, this Court is seized of inherent powers under Section 3A of the *Civil Procedure Act* (Cap. 21) and the overriding objective under Section 1A thereof to make such orders as may be necessary for the ends of justice. The appropriate remedy in the circumstances is not to strike out the appeal — which would be a drastic and disproportionate course — but to order its transfer to the forum of competent jurisdiction, namely the High Court at Embu.
10. The Respondent's submission that the appeal should be struck out is not persuasive. Striking out an appeal merely because it was filed in the wrong court, where the error is inadvertent and the correct forum is identifiable, would amount to a miscarriage of justice. The Court therefore finds and holds that the appeal herein, ELCLA No. E054 of 2025, ought to be and is hereby ordered to be transferred to the High Court at Embu for hearing and determination.
11. The Applicants seek a stay of execution of the judgment and decree in Succession Cause No. E163 of 2021. The Respondent counters that the decree has already been fully executed and that a stay of execution is therefore unavailable as the matter has been overtaken by events.
12. The jurisdiction to grant a stay of execution is governed by Order 42 Rule 6 of the Civil Procedure Rules, 2010. The established principles for the grant of a stay of execution were succinctly restated in *Butt v Rent Restriction Tribunal* [1979] KLR 88, where the Court of Appeal held that a court exercising the discretion to grant a stay must be satisfied that the appeal or intended appeal is an arguable one, that the applicant will suffer substantial loss if the order is not granted, that the application has been made without unreasonable delay, and that security has been or will be given.
13. However, as correctly pointed out by the Respondent and not substantially rebutted by the Applicants, the decree of the trial court has already been executed. Indeed, the Applicants' own exhibits — in particular the land registry searches marked AM2 and AM3(a)–(f) — confirm that the suit property Kagaari/Kanja/3301 has been subdivided into six parcels and some have been transferred. The fact of execution is not disputed; the Applicants acknowledge it and argue that some subdivisions are yet to be transferred to third parties.
14. In *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the Court held that where an act sought to be stayed has already been completed, an order of stay becomes a nullity as it would seek to reverse what has already been done without the proper mechanism. A stay of execution is a preventive — not a restorative — remedy. It arrests further execution; it cannot undo what has already been executed.
15. Accordingly, to the extent that the decree has been executed, an order of stay of execution would be ineffectual and is declined. The appropriate remedy, if the appeal on transfer ultimately succeeds on its merits, would be for the High Court to make restorative orders as appropriate.
16. The Applicants further seek prohibitory injunctive orders restraining the Respondent from further dealing with, transferring, charging, or alienating Land Parcel No. Kagaari/Kanja/3301 and its resultant subdivisions, as well as registration of restrictions over the said parcels.
17. The threshold for the grant of an interlocutory injunction is well-established. In the celebrated case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, the East African Court of Appeal laid down three conjunctive conditions: the applicant must establish a prima facie case with a probability of success; the applicant must demonstrate that they will suffer irreparable injury that cannot be adequately compensated by an award of damages; and where the court is in doubt on these two conditions, the balance of convenience must favour the granting of the injunction.



18. As regards the first condition, this Court notes that the appeal raises substantive questions concerning the distribution of the estate of the deceased and the rights of the Appellants therein. On the face of the pleadings, the Appellants have raised triable issues, including whether the grant was properly confirmed and whether the Respondent was entitled to deal with the estate property to the exclusion of the Appellants. A prima facie case is therefore established.
19. On the second limb, the Applicants argue that further alienation of the subdivisions to third parties would render the appeal nugatory, as restoration of title against bona fide third-party purchasers for value without notice would be practically impossible. The Court agrees that land, being unique in nature, is not adequately compensable by damages alone. The risk of irreversible transfer to innocent third parties constitutes potential irreparable harm.
20. The Respondent's submissions are largely directed at the finality of the execution and do not specifically address the risk of further alienation to third parties. The Court is therefore persuaded that partial preservation is warranted. Evidence before the Court indicates that while some subdivisions have been transferred, at least some of the resultant parcels remain undisposed of. It would be unjust to refuse any preservatory relief simply because some of the property has already been alienated.
21. In the circumstances, and having regard to the overriding objective of this Court and the constitutional mandate to protect substantive rights, this Court finds it appropriate to issue limited preservatory orders confined to those subdivisions that have not yet been transferred to third parties. The orders are however made in contemplation of the transfer of the appeal to the High Court, which will have full jurisdiction to review, vary, discharge or extend them as appropriate.

Final Orders

22. Accordingly, the following orders are issued:
 1. The appeal herein, ELCLANo. E054 of 2025, is hereby transferred to the High Court at Embu for hearing and determination, being a succession matter within the appellate jurisdiction of the High Court.
 2. The application for stay of execution of the decree in Succession Cause No. E163 of 2021 is declined, the decree having been substantially executed.
 3. Costs of this application shall be in the cause before the High Court.

It is so ordered.

DATED, SIGNED AND DELIVERED AT EMBU THIS 07TH DAY OF MAY, 2026.

E.C CHERONO

JUDGE

ENVIRONMENT AND LAND COURT AT EMBU

In the presence of;

Mr. Muriithi H/B Njiru Mbogo for the Appellant/Applicant

Respondent in person-present

M/S Ruth C/A

