

**IN THE COURT OF APPEAL
AT NAKURU**

[CORAM: MATIVO, MURUNGI & HASSAN, JJ.A)

CIVIL APPEAL (APPLICATION) NO. E163 OF 2025

BETWEEN

BONIFACE MUNYINYI MUKURIAH.....APPLICANT

AND

**AMOS M. OTARA.....1ST
RESPONDENT MINISTRY OF DEVOLUTION.....
2ND RESPONDENT MINISTRY OF LANDS AND
PHYSICAL PLANNING.....3RD
RESPONDENT COUNTY GOVERNMENT OF NAKURU.....
4TH RESPONDENT DISTRICT LAND REGISTRAR,
NAKURU.....5TH RESPONDENT**

(An application for a stay of execution from the judgement and decree of the Environment and Land Court at Nakuru (Dr. M.A Odeny, J.) delivered on 2nd July 2025

in

ELC Case No. E031 of 2022)

RULING OF THE COURT

1. By his Notice of Motion dated 5th December, 2025 brought under **Rule 5[2] b** of the Court of Appeal Rules, Boniface Munyi Mukuriah [the applicant], seeks an order of stay of execution of the judgement and decree issued by the Hon. Dr MA Odeny on 2nd July, 2025 in Nakuru ELC E031 of 2022 in which the learned judge found that Land parcel No.

Nakuru/Municipality Block 20/112 [hereinafter the suit land] did not belong to the applicant but was reserved for the Ministry of Livestock and Fisheries Development specifically the Regional Veterinary Services and that the [1st respondent] was instead entitled to a refund of the full purchase price in the sum of ksh 17,1440911.10 and attendant costs from the 1st defendant [the applicant] who had sold and transferred the suit property to the 1st respondent in the first place.

2. The trial court also directed the Land Registrar Nakuru County to cancel the 1st respondent's name as the registered owner of the subject land and revert the land to the relevant Ministry.
3. Dissatisfied with that decision the applicant lodged a notice of appeal dated 9th July 2025. Thereafter, he instituted appeal number [COACA NO. 163/2021] following which he filed the instant application pleading for stay of execution pending the hearing and determination of that appeal contending that his appeal as disclosed in the memorandum of appeal is arguable and will be rendered nugatory unless this Court allows his application. Those grounds include:

- a] The learned judge erred in holding that the appellant's title to Nakuru Municipality Block 20/112 was unlawfully acquired.
- b] The learned judge failed to appreciate that the appellant was an innocent purchaser for value of Nakuru Municipality Block 20/112.
4. The application is supported by his affidavit sworn on 5th December, 2025 and submissions dated 17th December, 2025 as orally highlighted by Mr. Langat on 21st April 2026 when the matter came up for hearing. The fulcrum of the applicant's submission is that he is now exposed to execution proceedings for recovery of the decretal sum and costs by the 1st respondent who continues to enjoy the use of land parcel number Nakuru Municipality Block 20/112 before he is heard on his appeal challenging the finding that the said land was illegally acquired as it was a public property.
5. The application is opposed by Amos M. Otara the 1st respondent on the grounds set out in his replying affidavit sworn on 13th December, 2025 and written submissions dated 17th February 2026 as highlighted orally by Mr. Ratemo on 21st April 2026. The 1st respondent contends

that the

applicant has not demonstrated that his appeal is arguable because he did not tender any evidence whatsoever to support his claim that he was an innocent purchaser for value without notice before the trial court, that the matters raised in the supporting affidavit are being raised before this court for the first time, the applicant did not file any claim against the 2nd 3rd 4th and 5th respondents.

6. As regards the appeal being rendered nugatory the 1st respondent avers that the applicant's recourse is against the person he purchased the property from, what is sought to be stayed is a money decree and the existence of an appeal is not sufficient reason for staying execution, the 5th respondent has already executed the part of the judgment directing cancellation of his name as the registered owner of the property and the land reverted to the relevant ministry as ordered by the court, the court cannot stay that which has already been executed, the applicant has not averred or demonstrated that he faces any difficulty in paying the decretal amount during the pendency of the appeal and neither has he demonstrated that the 1st respondent will be

unable to refund the decretal amount in the unlikely event that his appeal succeeds.

7. We have considered the rival arguments proffered by the parties in support and opposition to the application together with the relevant case law cited by the parties setting out the principles governing the exercise of this Court's jurisdiction when considering an application for stay of execution under **Rule 5[2][b]** of the Court of Appeal Rules 2022.

8. Both parties agree that the principles governing this Court's original and discretionary jurisdiction in determining an application of this nature are well settled. To succeed, an applicant must satisfy the court that he has an arguable appeal which would absent an order of stay be rendered nugatory. The applicant's counsel cited **Stanley Kangethe Kinyanyui vs Tony Ketter & 5 Others** [2013] eKLR where those principles were elaborately restated and amplified. The respondent 's Counsel cited and relied on **Rajab Ahmed** **Karume vs The Chief Land Registrar & Others** Civil Application E390 OF 2020, **Dennis Mogambi Mongare** **VS**

Attorney General & 3 Others Civil Application No. NAI
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Of 2011 and **Ben Nyakundi vs Rajab Karume & 3 Others**
[2020] KECA 256 [KLR].

9. We have carefully considered the grounds of appeal. We are satisfied that the question whether the judge erred in holding that the appellant acquired title to LR Nakuru Municipality Block 20/112 illegally, unlawfully or through a corrupt scheme is arguable. The applicant has satisfied the first limb of the conditions for grant of stay. However, we are not persuaded that the appeal will be rendered nugatory in the event that the appeal succeeds because according to the judgment the title reverts to the relevant ministry and can always be retransferred in the event that the appeal succeeds. The other element in the judgment is a money decree and the applicant has neither alleged nor demonstrated that the 1st respondent will be unable to refund back the decretal amount in the event that the appeal ultimately succeeds. The applicant has thus not satisfied the second limb of the requirements for grant of an order of stay of execution.
10. As the law requires that both conditions must be met before the court can exercise its discretion the application fails. We

find no merits in the application dated 5th December, 2025 and dismiss it with costs to the 1st respondent.

Dated and delivered at Nakuru this 15th day of May, 2026.

J. MATIVO

.....
JUDGE OF APPEAL
MURUNGI B. KAIRARIA

.....
JUDGE OF APPEAL
AHMED ISSACK
.....
... JUDGE OF APPEAL

*I certify that this is
a True copy of the
original
Signed*

DEPUTY REGISTRAR

