



Njoroge (Suing as the Personal Representative of the Estate of Angelo Kanyuanjohi Macharia) v Land Registrar, Murang'a Lands Office & 2 others (Environment and Land Case 47 of 2017) [2025] KEELC 5433 (KLR) (22 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5433 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE 47 OF 2017**

**MN GICHERU, J
JULY 22, 2025**

BETWEEN

**MACHARIA NJOROGE PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF ANGELO
KANYUANJOHI MACHARIA**

AND

THE LAND REGISTRAR, MURANG'A LANDS OFFICE RESPONDENT

AND

**LYDIA NJOKI MAGUTA 1ST DEFENDANT
STACY WAMBUI NYINGI 2ND DEFENDANT**

RULING

1. This Ruling is on the notice of motion dated 5-3-2025. The Motion which is by the plaintiff is brought under Section 3A,63(c) and (e) of the *Civil Procedure Act*, Order 40 rules 1(a),3(3) and 4(1) of the Civil Procedure Rules and all other enabling provisions of the law and powers of the court.

The motion seeks the following residual orders:

5. A temporary injunction restraining the Respondents, whether by themselves their agents and/or servants from attaching movable assets, advertising for sale by action dealing, interfering, alienating or otherwise disposing motor vehicle registration No. KCR 880 U pending the hearing and determination in Nyeri Court of Appeal case No E044 OF 2023, Gabriel Macharia Vs. Murang'a Land Registrar and 2 Others.
6. The OCS Buruburu Police Station be directed to assist and ensure compliance by the Defendants.



7. Stay of execution of the decree/certificate of costs dated 26-7-2024 in Murang'a MELC No 47 of 2017 pending the hearing and determination of Appeal No. E044 of 2023 aforesaid.
2. The Notice of motion is based on eight (8) grounds and it is supported by an affidavit sworn by the Plaintiff dated 5-3- 2025. The affidavit has six annexures. The gist of the motion is as follows. Firstly, motor vehicle no KCR 880U was unlawfully attached because it does not belong to the estate of Angela Kanyua Njohi Macharia which is the judgment debtor. It is jointly owned by the Applicant and U and I Micro Finance Bank Ltd. Secondly, Nyeri Court of Appeal E044/2023 will be rendered nugatory if execution of the decree herein is effected as it will be an affront to the Applicant's right to a fair hearing under Article 50(1) of *the Constitution*. Thirdly, the warrants served upon the Applicant are incomplete because they do not bear an official Court stamp. Fourthly, the pending appeal is meritorious with high likelihood of success. Fifthly, the Applicant stands to suffer substantial loss if execution continues and this will render the appeal nugatory.
3. The motion is opposed by the 2nd and 3rd Defendants and their Advocate Davies Mulani has sworn a replying affidavit dated 17th march 2025 in which he replies as follows. Firstly, the Plaintiff has not taken any step to prosecute the appeal pending at the Court of Appeal in Nyeri since March 2020. Instead, he has filed two cases raising the same issues as in this case. These cases are Kangema SPM ELC Case No. E001/2022 and Succession Miscellaneous Application No. E012/2022 and the Plaintiff has not been successful. The same fate befell his application for review dated 14th September 2022. Secondly, there are no orders of stay of the decree herein and the Defendants filed a bill of costs. After the bill of costs was taxed, the Plaintiff filed a reference before this court and the said reference was dismissed on 14-4-2023. There was no appeal against the dismissal of the reference.

Thirdly, there being no appeal pending relating to the costs, the Plaintiff cannot invoke the jurisdiction of this court under Order 42 rule 6(2) Civil Procedure Rules as the motion is not anchored on a competent appeal and this court cannot issue orders in a vacuum.

Fourthly, the Plaintiff has failed to prove that he will suffer substantial loss if the application is not allowed. Finally, the Plaintiff has not provided any security for the due performance of the decree that may be passed against him.
4. Counsel for the parties filed written submission dated 6th and 23rd May, 2025 respectively. The issues identified are as follows:
 - a. Whether the instant application is competent.
 - b. Whether the orders sought should be granted.
 - c. Whether the Plaintiff has satisfied the principles for grant of a stay of execution pending appeal.
 - d. Who bears the costs of the motion.
5. I have carefully considered the motion in its entirety including the grounds, affidavits and annexures, the written submissions and the law cited therein. I make the following findings on the identified issues.
6. On the first issue, I find that the application is competent because the question is whether motor vehicle No KCR 880 U which does not belong to the estate of Angelo Kanyua Njohi Macharia should be attached or not. There is credible and uncontroverted evidence in form of Motor Vehicle copy of records, MCR –LLPTAA73R, which shows that as at the 5th of March 2025, the vehicle was owned by Gabriel Macharia Njoroge and U and I Microfinance Bank Limited. The replying affidavit by the Defendant's counsel should have addressed this critical issue of ownership of the vehicle No. KCR 880 U.



Even though this motion has not been brought under Order 22 rule 51 of the Civil Procedure Rules which relates to objection to attachment, the question of the ownership of motor vehicle KCR 880U goes to the core of the entire application.

7. The current motion does not seek stay of execution under Order 42 Civil Procedure Rules at the heading. It only cited Order 40 Civil Procedure Rules and makes no mention of Order 42 Civil Procedure Rules which deals with appeals. Prayer 7 appears to have been sneaked in because it is not anchored on the relevant order of the Civil Procedure Rules.

I will therefore only consider the application for injunction. In fact the main ground upon which the motion is based is that Motor vehicle No KCR 880 U does not belong to the estate of Angelo Kanyua Njohi Macharia. This implies that the Applicant acknowledges that maybe the estate of Angelo Kanyua Njohi Macharia can lawfully have its property attached to recover the costs adjudged by the taxing officer.

8. In deciding whether an order of injunction should issue, the Court will be guided by the three (3) principles set out in the case of *Gielle vs Cassman Brown*[1973] E.A 358. These principles are as follows.

The Applicant must establish a prima facie case with a probability of success. Secondly he must prove that he stands to suffer substantial loss that cannot be adequately compensated by an award of damages. Finally, if the Court is in doubt about the above principles, it should consider the balance of convenience. Applying the above principles to the motion, this court cannot speculate on whether the appeal pending at the Court of Appeal has merit or not. That is for the higher court. It is not disputed by the Defendants that there is a pending appeal. If the said appeal were to succeed, it would mean that the entire decree of this court could be set aside. Secondly, if motor vehicle No KCR 880 U were to be sold when its ownership is not proved to the estate of the late Angela Kanyua Njohi Macharia, the registered owners including the financier would lose it.

Thirdly, the balance of convenience tilts in favour of allowing the motion since the Defendants have not shown that the motor vehicle belongs to the Plaintiff and him alone. There is evidence that a third party, U and I Finance Bank Limited stands to lose if the vehicle were to be sold.

9. Since the plaintiff does not strictly speaking seek a stay of execution of the decree herein, I find that it's not necessary for me to decide on the third issue which deals with stay of execution pending appeal where the Applicant would be required to satisfy three condition set out in Order 42 rule 6(2) Civil Procedure Rules.
10. On the final issue of who bears the costs, I find that they should abide the outcome of Nyeri Court of Appeal E044/2023 so that the successful party in that case will be the party that gets the costs of this application.
11. For the above stated reason, the notice of motion dated 5-3-2025 is allowed in term of prayers 5 and 6 only.

Costs to abide the outcome of the pending appeal in the Court of Appeal at Nyeri.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 22ND DAY OF JULY, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of ;-



Mwangi Njonjo - Court Assistant
Plaintiff's Counsel - Mr Ndungu
Defendant's Counsel - Mr Onyacha

