



Njoroge & another v Muinami & 3 others (Environment and Land Appeal E042 of 2024) [2025] KEELC 5442 (KLR) (21 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E042 OF 2024**

**MN GICHERU, J
JULY 21, 2025**

BETWEEN

RICHARD MAINA NJOROGE APPELLANT

AND

RICHARD MAINA NJOROGE APPLICANT

AND

SUSAN WANJIRA MUINAMI 1ST RESPONDENT

SUSAN WANJIRA MUINAMI 2ND RESPONDENT

THE LAND REGISTRAR MURANG'A 3RD RESPONDENT

LAND REGISTRAR MURANG'A 4TH RESPONDENT

RULING

1. This ruling is on the notice of motion dated 22-10-2024. The motion which is by the Appellant seeks three (3) residual orders as follows.
 3. Stay of execution of the ruling, consequential order and proceedings of Murang'a MCELC Case No. E011/2022 pending the hearing and determinant of the appeal.
 4. The court be pleased to make such further orders and issue any other relief it may deem just to grant in the interest of justice.
 5. That the costs of this application be in the cause.
2. The motion which is brought under Sections 1A, 1B, 3A and 63 of the Civil Procedure Act, Order 42 rule of the Civil Procedure Rules, 2010 and all enabling provisions of law is based on twenty three (23) grounds and is supported by an affidavit of Appellant dated 22-10-2024 which has five (5) annexures.



The gist of the entire motion is as follows. One, the Appellant instituted the lower court suit seeking the removal of a caution registered against his land parcel No. Loc. 20/Mirira/4800. The caution had been registered by the second Respondent at the behest of the first Respondent. Two, at the conclusion of the trial, the learned trial magistrate found that Applicant held the suit land in trust for the 1st Respondent and one John Brian Muinami Maina. Three, aggrieved by the judgment, the Appellant filed an application for review of the judgment and decree of the court which application was dismissed by the court vide a ruling dated 18-9-2024. This appeal is against that particular ruling of 18-9-2024. Four, the decision of the trial court has completely dispossessed the Appellant and his family of the suit land on the grounds of an unproved trust because the court failed to consider that the Appellant has a wife and two Children who have effectively been locked out of the suit land. Five, the paternity of the 1st Respondent's child remains contested by the Appellant and it was not resolved.

3. The motion is opposed by the 1st Respondent who has sworn a replying dated 27-11-2024 in which she replies as follows. Firstly, the suit land has already been registered in the joint names of the Appellant, the first Respondent and John Brian Muinami Maina since 13-4-2023 in execution of the judgment dated 7-12-2022. Secondly, the application for review was made after an inordinately long period of over one(1) year and it was dismissed for lack of merit. Thirdly, the Applicant was represented by a competent firm of advocates and he cannot be heard to give an excuse for failing to lodge his appeal on time. Fourthly, the 1st Respondent has instructed her advocates to dissolve the trust so that she may realise the fruits of her judgment and since the application for review was dismissed, there is nothing to stay.
4. The Applicant filed a supplementary affidavit dated 31-1-2025 in which he adds as follows. One, the application for review was made without delay but he had constraints of health and finances. Two, the suit land is family land and the Appellant has a wife and children who too have a right to a share of the same especially because it is inherited from his parents. Execution of the decree of the lower court will occasion grave injustice to his family. Three, the finding by the trial court that there was no error apparent on the face of the record, in its decision warrants to be determined by this court. Finally, if the 1st Respondent dissolves the trust before the appeal is determined, the suit land could be alienated and the pending appeal rendered nugatory.
5. Counsel for the parties filed written submissions dated 3-2-2025 and 12-2-2025 respectively.
6. I have considered the motion in its entirety including the grounds, the affidavits, the annexures and the written submissions . Since the appeal itself is also pending before me, I will not delve deeply into this ruling. Suffice it to say that I find merit in the motion for only one reason. This is the admission by the 1st Respondent at paragraph 12 of the replying affidavit that she desires to dissolve the trust. She states as follows-

“ That I do confirm that I am desirous of dissolving the trust and I did instruct my advocates on record to author and serve the letter dated 19-9-2024 which letter was never elicited any response...”
7. If the trust were dissolved before the appeal is heard, the suit land could end up being sold to third parties by the 1st Respondent and this will definitely mean the appeal will be rendered nugatory.
8. For this reason alone, I find merit in the motion dated 22-10-2024 which I allow in terms of prayer 3.
9. Costs in the cause.

It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 21ST DAY OF JULY, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Miss Maina holding brief

1st Respondent's Counsel – Mr Mbue Ndegwa

