



**Mwangi v Ngugi (Environment and Land Miscellaneous Case  
E022 of 2024) [2025] KEELC 5373 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5373 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E022 OF 2024**

**JM ONYANGO, J**

**JULY 16, 2025**

**BETWEEN**

**JULIUS KANJA MWANGI ..... APPELLANT**

**AND**

**WINNIE NGUGI ..... RESPONDENT**

**RULING**

1. This Ruling is in respect of a Notice of Motion application dated 14<sup>th</sup> May 2024 filed by the Appellant (Applicant) under Article 159 of the Constitution of Kenya 2010, Section 1A, 1B, 3 and 3A of the Civil Procedure Act, Order 22 Rule 25, Order 45 Rule (1) and Order 51 Rule 1 of the Civil Procedure Rules 2010, Cap 21 of the Laws of Kenya. In the said application, the Applicant seeks the following orders:
  1. Spent.
  2. Spent.
  3. Spent.
  4. That pending the hearing and determination of the intended Appeal against the Judgment delivered in Ruiru Magistrate's Court Environment and Land Court Case No. E144 of 2021-Julius Kanja Mwangi (Plaintiff)-Versus-Winnie Ngugi (Defendant) delivered by the Learned Trial Magistrate, Honourable Joseph Were, CM, this Honourable Court be pleased to issue an Order of stay of execution of the Judgment delivered on 12<sup>th</sup> April 2024 and any consequential Orders and/or Decrees ensuing therefrom extracted in facilitation of the execution process against the Appellant/Applicant.
  5. That pending the hearing and determination of the intended Appeal, this Honourable Court be pleased to issue an interim order of injunction prohibiting the Respondent herein whether by herself, her employees, agents and/or any other person or entity from selling, destroying,



transferring, disposing or in any other way interfering with the status of ownership of the subject property known as Plot No. N7 on Ruiru/Ruiru Block 126 to the detriment of the proprietary interests of the Appellant/Applicant, whether on the strength of the impugned Judgment delivered on 12<sup>th</sup> April 2024 in Ruiru Magistrate's Court, Environment and Land Court Case No. E144 of 2021 -Julius Kanja Mwangi (Plaintiff) -versus- Winnie Ngugi (Defendant) delivered by the Learned Trial Magistrate, Honourable Joseph Were, CM or by dint of any other authority.

6. That this Honourable Court be pleased to grant leave to the Appellant to pursue its Appeal out of time.
7. That costs for this Application be provided for.
2. The Application is supported by grounds on the face of it and by the Supporting Affidavit sworn by Julius Kanja Mwangi (Appellant/Applicant) on 14<sup>th</sup> May, 2024. The Applicant avers that he is dissatisfied with the Judgment of the trial court delivered on 12<sup>th</sup> April 2024, and the resultant Decree issued by the Court on 6<sup>th</sup> May 2024 and that he wishes to appeal against the said decision on the basis of the grounds elucidated in the draft Memorandum of Appeal.
3. He depones that the cause for the delay in filing the appeal was occasioned by the fact that it took time to extract the typed copy of the Lower Court's Judgment for him to study the same and instruct his Advocates on the Appeal. He further depones that despite the Judgment having been delivered on 12<sup>th</sup> April, 2024, he was informed severally that the file was in the Chambers of the honourable trial magistrate and the same was only released on 6<sup>th</sup> May, 2024. He adds that upon perusal of the said file he learnt that a Decree dated 6<sup>th</sup> May, 2024 had been issued.
4. He states that the Respondent is actively sourcing for a buyer for the suit land, and he is apprehensive that she might sell it to a third party, as a result, rendering the appeal nugatory. He further states that the Appeal has high chances of success. He depones that the Application has been brought without any delay from the time he managed to access the trial court file. It is his position that the Respondent will not be prejudiced if this Application is allowed.
5. The Respondent opposes the Application through a Replying Affidavit sworn by her on 29<sup>th</sup> October 2024. She contends that the allegation by the Applicant that she is in the process of disposing of the suit land is untrue and is only meant to mislead this court and to secure interim conservatory orders. She adds that she only intends to develop the suit property when she secures sufficient funds, because that was her intention when she purchased it.
6. She contends that prayers (4) and (5) of the Application are untenable given that the proposed intended appeal has not yet been admitted by this court.
7. She faults the Applicant for failing to adduce evidence or any official correspondence to demonstrate that he made credible efforts to inform the trial court that he could not access the court file and that he intended to prefer an appeal.
8. She asserts that the grounds contained in the draft Memorandum of Appeal do not demonstrate chances of success in the intended Appeal, as the Applicant's plot identification number is different from her Plot number. She adds that her land is identified as Plot No.7 within L.R. No. Ruiru/Ruiru Block 126, whilst the Applicant's property is identified as Plot No. N7 within L.R. No. Ruiru/Ruiru Block 126.



9. In conclusion, she stated that the trial court stated in its Judgment delivered on 12<sup>th</sup> April 2024, that the parcel sold to the Applicant was different from the parcel sold to the Respondent. She adds that the trial court further advised the Applicant to undertake diligence to locate the parcel of land sold to him.
10. None of the parties submitted on the Application. Having perused the Application and the Replying Affidavit, the following key issues emerge for determination:
  - i. Whether the court should grant the Applicant leave to file an appeal out of time against the Judgment dated 12<sup>th</sup> April 2024.
  - ii. Whether the court should grant an order of injunction prohibiting the Respondent from in any way interfering with the suit property pending the hearing and determination of the Appeal.
  - iii. Whether the court should issue an order for stay of execution of the Judgment entered on 12<sup>th</sup> April 2024 pending the hearing and determination of this Appeal.

### **Analysis and Determination**

#### **Whether the court should grant the Applicant leave to file an appeal out of time against the Judgment dated 12<sup>th</sup> April 2024.**

11. Section 79G of the *Civil Procedure Act* provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

12. It is clear that the court has a wide discretion to extend time within which to file an appeal although the discretion must be exercised judiciously. In the case of *County Executive of Kisumu v County Government of Kisumu and 8 Others* [2017] eKLR the Supreme Court of Kenya held as follows:

“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the *Nicolas Salat* case to which all the parties herein have relied upon. The Court delineated the following as the under-lying principles that a Court should consider in exercise of such discretion:

Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;

- a. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- b. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;



- c. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  - d. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  - e. Whether the application has been brought without undue delay; and
  - f. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
13. In the present case, the Applicant intends to appeal against the Judgment of the trial court delivered on 12<sup>th</sup> April 2024. He has explained that delay in filing the Appeal was occasioned by the lack of access to the trial court file, which he was notified was still in the chambers of the Honourable Trial Magistrate. In response, the Respondent has stated that the explanation given by the Applicant does not suffice because he has not adduced evidence or any official correspondence to demonstrate that he made credible efforts to inform the trial court that he could not access the court file and that he intended to prefer an appeal.
14. The Applicant has further contended that this Application has been brought without any delay from the time he managed to access the trial court file. He has stated that he only managed to access the file from 6<sup>th</sup> May 2024, when he discovered that a decree of even date had been issued in the suit. This Application was filed on 14<sup>th</sup> May 2024, approximately 8 days after the day the Applicant claims he could access the trial court file. The impugned Judgment was delivered on 12<sup>th</sup> April 2024. Therefore, the statutory timeline of 30 days within which to file the appeal lapsed on 13<sup>th</sup> May 2024. This application was filed a day later.
15. Even though, I agree with the Respondent that the Applicant has not produced any evidence to substantiate his claim that he was unable to access the trial court’s file until 6<sup>th</sup> May 2024, I will give the Applicant the benefit of the doubt and assume that he was indeed not able to access the trial court’s file or a copy of the impugned Judgment before the said date. Further, given that the delay in filing this application was not inordinate, I will grant the Applicant leave to file the appeal out of time.

**Whether the court should grant an order of injunction prohibiting the Respondent from in any way interfering with the suit property pending the hearing and determination of the Appeal.**

16. The Applicant has sought an interim order of injunction prohibiting the Respondent from selling, destroying, transferring, disposing or in any other way interfering with the status of ownership of the subject property known as Plot No. N7 on Ruiru/Ruiru Block 126.
17. Order 42 Rule 6 of the Civil Procedure Rules, 2010 provides thus: -
- “(6) Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from subordinate Court or tribunal has been complied with.”
18. It is clear that the court has the discretion to grant an injunction pending appeal if it is satisfied that the appeal has been properly filed. The said discretion however must be exercised judicially on the basis of law and relevant affidavit evidence. In the case of Patricia Njeri & Others vs National Museums



of Kenya (2004 eKLR), the court identified the following principles that should guide the court in considering such an application. These are:

1. An order of injunction pending appeal is discretionary and will not be granted where the appeal is frivolous.
2. The discretion should be refused where it would inflict greater hardship than it would avoid.
3. The applicant must show that if the injunction is not granted, the appeal will be rendered nugatory.
4. The Court should be guided by the principles set out in the case of *Giella vs Cassman Brown Ltd* [1973] E.A 358.

19. Further, in *Charter House Bank Limited vs Central Bank of Kenya & Others C.A Civil Application No. 200 of 2006* (2007 e K.L.R), the Court of Appeal held that:

“The principles upon which this Court exercises its unfettered discretion to grant a stay of execution, stay of proceedings or an order of injunction are settled. The applicant should satisfy the Court that the appeal or intended appeal is not frivolous, that is to say, that the appeal or intended appeal is arguable and, secondly, that unless the application is granted the results of the appeal, if successful would be rendered nugatory. The purpose of granting an injunction pending appeal is to preserve the status quo and to prevent the appeal, if successful, from being rendered nugatory”.

20. In the case of *Giella vs. Cassman Brown* [1973] EA 358, the court stated the conditions for grant of interlocutory injunctions as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

21. A prima facie case was defined in the case of *Mrao Limited vs. First American Bank of Kenya & 2 Others* [2003] eKLR as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

22. A perusal of the impugned Judgment annexed in the Respondent’s Replying Affidavit reveals that the Applicant was the Plaintiff in the trial court while the Respondent was the Defendant. From the Judgment, it emerges that the Respondent sued the Applicant in the trial court seeking inter alia eviction orders against the Respondent to evict her from Land Parcel Number Ruiru/Ruiru Block 126, Plot N7. He also sought a permanent injunction against the Respondent restraining her from evicting, harassing, intimidating, trespassing on, wasting, constructing on, alienating or dealing with the said land in any manner. His claim was that he was the owner of Land Parcel Number Ruiru/Ruiru Block 126, Plot N7 having bought it in 1999 from one Esther Wangari. In response to the Applicant’s claim, the Respondent stated that her land was Land Parcel Number Ruiru/Ruiru Block 126, Plot 7



without the “N”. Upon hearing both parties, the trial court found that the Applicant had not proved his case to the required standard and proceeded to dismiss the suit.

23. The Applicant is aggrieved by the said Judgment and has faulted the learned trial magistrate for finding that they had been paid the full purchase price for the suit property, yet no evidence to corroborate that fact was adduced. They have further faulted the learned trial magistrate for declaring that they had breached the contract between the parties when in fact, it was the Respondent who was in breach. Due to the foregoing, this court is convinced that the Applicant has demonstrated a prima facie case and that the intended Appeal is not frivolous.
24. On whether irreparable harm would be occasioned to the Applicant if the injunction is not granted, it emerges from the impugned Judgment and the affidavits in this application, that the Respondent is in possession of the suit property. The Applicant has contended that the Respondent intends to dispose of the suit land, which will render this appeal nugatory. However, the Applicant has not demonstrated the irreparable harm he is likely to suffer if the said order is not granted. In view of the foregoing, I find no need to consider the third limb espoused in the case of *Giella vs Cassman Brown* (supra).

**Whether the court should issue an order for stay of execution of the Judgment/Decree entered on 12<sup>th</sup> April 2024 pending the hearing and determination of this Appeal.**

25. The Applicant has also sought an order for stay of execution pending appeal. The decree the Applicant seeks to stay is the decree dismissing the suit at the trial court. That is a negative order incapable of being stayed. There is nothing that the learned trial magistrate ordered to be done or to refrain from being done. In *Western College of Arts and Applied Sciences vs Oranga & Others* [1976-80] 1 KLR 63, the Court of Appeal for East Africa stated thus on the issue:

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In *Wilson v Church*, the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court Judgment for this Court, in an application for a stay, it is so ordered.”

26. Similarly in *Co-operative Bank of Kenya Limited vs Banking Insurance & Finance Union (Kenya)* [2015] eKLR the court held as follows:

“An order for stay of execution [pending appeal] is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a Judgment. The delay of performance presupposes the existence of a situation to stay, called a “positive order,” – either an order that has not been complied with or has partly been complied with. See, for this general proposition, the holding of the Court of Appeal of Uganda in *Mugenyi & Co. Advocates v National Insurance Corporation* (Civil Appeal No. 13 of 1984) where it was stated: ‘... an order for stay of execution must be intended to serve a purpose ...’”

27. As a result, the application dated 14<sup>th</sup> May 2024 is allowed in the following terms:
  - a. Leave is hereby granted to the Applicants to file an appeal out of time against the Judgment delivered by Hon. Joseph Were (CM) on 12<sup>th</sup> April 2024 within the next 21 days, failure to which this order shall automatically be set aside.



b. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED THIS 16TH DAY OF JULY 2025**

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**J. M ONYANGO**

**JUDGE**

In the presence of :

1. Mr Karanja for Mr Wambua for the Applicant
2. Mr Kuria for the Respondent

Court Assistant: Hinga

