



**Imathiu v Brenchley (The Legal Representative of the Estate of David Lee Brenchley)  
(Civil Application E129 of 2024) [2025] KECA 395 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 395 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E129 OF 2024  
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA  
FEBRUARY 21, 2025**

**BETWEEN**

**PETER KIRIMA IMATHIU ..... APPELLANT**

**AND**

**SUSAN MWARI BRENCHLEY ..... RESPONDENT**

**THE LEGAL REPRESENTATIVE OF THE ESTATE OF DAVID LEE  
BRENCHLEY**

*(An appeal from the Judgment and Order of the Environment and Land Court at Meru  
(C.K. Nzili, J.) delivered on 20th November, 2024 in E.L.C Appeal No.E076 of 2022)*

**RULING**

1. In a suit filed at the Chief Magistrate’s Court at Meru Susan Mwari Brenchley (Suing as the legal representative of the Estate of David Lee Brenchley – deceased) (the respondent here) sued the applicant Peter Kirima Imathiu claiming for an order that the applicant execute transfer instrument and facilitate effective transfer of parcels of land known as LR Nos. Nyaki/Munithu/1480 and 1481 (hereafter ‘the suit land’) to her in default the executive officer of the court be empowered to execute such transfer instrument. The respondent also prayed for a permanent injunction restraining the applicant from entering or interfering with the suit land. The suit was heard and dismissed. The respondent being dissatisfied with those findings preferred an appeal to the Environment and Land Court at Meru and in a judgment delivered by Nzili, J. on 20<sup>th</sup> November, 2024 the appeal was allowed, the court finding that the applicant held the suit land in trust for the respondent’s deceased husband (David Lee Brenchley). The Judge specifically made the following finding at paragraph 69 of the judgment.

“69. Similarly, evidence was led that the respondent willingly surrendered the original title deeds to the deceased and, equally, willingly signed the application



form for land control board consent and attended a land control board meeting with the intention to surrender and transfer the suit parcels of land. All these facts taken together and in total leave no doubt in my mind that the respondent held the two title deeds in trust for the appellant's deceased husband."

2. The Judge ordered the applicant to forthwith surrender the suit land to the respondent by signing transfer forms in favour of the respondent within 30 days or in default the Deputy Registrar of that Court to do so.
3. The applicant has approached this Court in a motion on notice under section 3 of the *Appellate Jurisdiction Act* and rule 5(2)(b) of the rules of this Court praying in the main that we be pleased to issue an order staying the said judgment pending the hearing and determination of the application and the intended appeal. It is said, inter alia, in grounds in support of the application and in a supporting affidavit of the applicant that he (the applicant) is the registered proprietor of the suit land since 10<sup>th</sup> February, 1993; that since the said acquisition he has invested emotionally and financially in the suit land including by planting trees, fencing, building a permanent gate "... and much more. Further, the applicant holds great sentimental value to the properties which are his home, here in Kenya..." It is said that the applicant stands to lose the suit land to the respondent if the judgment is executed; that his appeal will be rendered nugatory if the suit land is transferred to the respondent; that he has lodged notice of appeal against the whole decision.
4. In a replying affidavit the respondent gives a history of how her late husband, an American citizen, arrived in Meru as a missionary to assist the Methodist Church in Kenya to establish Kenya Methodist University while teaching at Methodist Training Institute; that her late husband and the applicant were close friends and because the deceased had not obtained Kenyan citizenship he engaged the applicant to buy and hold the said land as trustee; that the deceased bought the suit land and paid purchase price and also paid for other facilities on the suit land; that on purchase the deceased took possession of the suit land and developed the same. She says:

"... On the suit land, we have properties including 1 cemented two-stone course timber house, a permanent gate, 1 big permanent tank, trees, k- apple/barbed wire/wooden posts fence. Annexed hereto and marked "SMB3" are photographs of the suit premises. ..."
5. She further says that during her late husband's lifetime the applicant expressed willingness to transfer the suit land to him making him (the applicant) to apply for consent of Land Control
6. Board for transfer and that even after the death of the deceased the applicant expressed willingness to transfer the suit land to her through an email dated 13<sup>th</sup> May, 2015. She says that the applicant has no arguable appeal which would not be rendered nugatory if we do not grant the application.
7. We have seen and considered written submissions filed by both sides and the case law filed in support of the rival positions taken by the parties.
8. The application before us prays for a stay of execution of the judgment pending appeal.
9. The principles that apply in an application of this nature are well known. For an applicant to succeed he must, firstly, show that the appeal, or intended appeal, as the case may be, is arguable which is the same as saying that the same is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay - see for a good summary of those principles the case of Stanley Kangethe Kinyanjui vs. Tony Ketter & Others [2013] eKLR.



10. We have seen draft Memorandum of Appeal attached to the motion and were informed by learned counsel for the applicant Mr. Kamunde that Civil Appeal No. E233 of 2024 has since been filed. The applicant argues on appeal that the Judge on first appeal erred in law and in fact to find that he held the suit land in trust for the deceased "... contrary to the evidence on record." It is argued in another ground (amongst others) that the Judge erred in law and fact in holding that there was an intention to create and found a trust between the applicant and the respondent's late husband on the purchase of the suit land. Upon consideration we find these not to be idle grounds; they are arguable on appeal. As has been held by this Court an arguable point on appeal is not one which will necessarily succeed, it is one that requires a full consideration and determination by the Court *Damji Pragji Mandavia vs. Sara Lee Household & Body Care (K) Ltd Civil Application No. Nai 345 of 2004.*
11. What about the nugatory aspect which an applicant must also satisfy to succeed in an application like this one?
12. The respondent in opposing the application states as follows at paragraph 23 of Replying Affidavit:
  23. That further to the foregoing I wish to state that the appeal herein will not be rendered nugatory if the orders sought are not granted on account of the following reasons.
    - (a). The Appellant does not reside on the suit property.
    - b. It would be unconscionable to issue the order of stay as it would prolong the unjustified suffering and prejudice occasioned on the Respondent's family.
    - c. The suit property is the matrimonial house of the Respondent and she has no intention of disposing of the same.
    - d. An order of stay would amount to aiding and abetting the fraudulent scheme of the Appellant."
13. There is no contest that the applicant does not reside on the suit land. There is no evidence placed before us that the respondent will or intends to dispose of the suit land in any way at all. The respondent has deponed that the suit land is matrimonial property which she has no intentions of disposing of at all. There is no evidence that the applicant cannot be compensated in damages if the appeal succeeds and the suit land was beyond his reach. In other words nothing would be negated if the application was refused.
14. The applicant has failed to satisfy us that the appeal will be rendered nugatory if we do not grant a stay. Therefore, the motion fails and is dismissed with costs.

**DATED AND DELIVERED AT NYERI THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL**



**ALI – ARONI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

