



**Bamboo Twist Limited v National Land Commission & 7 others;  
Embassy of Rwanda & another (Interested Parties) (Civil Application  
E059 of 2024) [2025] KECA 120 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 120 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E059 OF 2024  
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA  
FEBRUARY 7, 2025**

**BETWEEN**

**BAMBOO TWIST LIMITED ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT .... 2<sup>ND</sup>  
RESPONDENT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY LAND REGISTRAR, MOMBASA ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MOMBASA ..... 6<sup>TH</sup> RESPONDENT**

**THE CABINET SECRETARY, TRADE & INVESTMENTS .... 7<sup>TH</sup> RESPONDENT**

**SPECIAL ECONOMIC ZONE AUTHORITY ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**EMBASSY OF RWANDA ..... INTERESTED PARTY**

**AWALE TRANSPORTERS ..... INTERESTED PARTY**

*(Being an application for an injunction pending appeal against the Ruling  
and Orders of the Environment and Land Court of Kenya at Mombasa  
(S. Kibunja, J.) delivered on 8th May 2024 in Petition No. 3 of 2020)*



## RULING

1. Before us is a Notice of Motion dated 3<sup>rd</sup> June 2024 filed by Bamboo Twist Limited, the applicant, under rule 5(2) (b) of the *Court of Appeal Rules* seeking temporary injunction to restrain the County Government of Mombasa, the 6<sup>th</sup> respondent, from “... continuing to assert any rights whatsoever or in any manner howsoever interfering with the applicant’s proprietary rights or its rights of use, occupation and/or development of its properties comprised of Plot Nos. MN/VI/1128, 1129, 1130, 1131 and 1132 ...” (the suit properties) pending hearing and determination of the intended appeal; and that the costs of the Motion be borne by the 6<sup>th</sup> respondent.
2. The applicant’s Motion was supported by the annexed affidavit of Harji Govind Ruda, its Director, sworn on 3<sup>rd</sup> June 2024 deposing to the grounds on which the Motion is anchored, namely: that the applicant has an arguable appeal; that, unless the orders sought are granted, the intended appeal will be rendered nugatory; and that, it is just, right and in the interest of justice that the orders sought are granted.
3. Opposing the Motion, the 5<sup>th</sup> respondent – the Attorney General, filed a replying affidavit sworn on 25<sup>th</sup> June 2024 by George O. Nyangweso, a Land Registrar, for and on behalf of the 2<sup>nd</sup> to 8<sup>th</sup> respondents (both inclusive) essentially narrating the background of the dispute leading to the impugned judgment and the intended appeal, and stating that the suit properties were allocated to the 6<sup>th</sup> respondent and foreign missions; that granting the orders sought would not be in the public interest, and that it would tarnish the image of the Republic; that any loss or injury suffered by the applicant is capable of being remedied by compensation; that the applicant has failed to demonstrate that it has an arguable appeal; and that the application should be dismissed with costs.
4. In addition, the 5<sup>th</sup> respondent filed Grounds of Opposition dated 25<sup>th</sup> June 2024 essentially replicating the averments contained in the replying affidavit of George O. Nyangweso.
5. Likewise, the 2<sup>nd</sup> Interested Party, Awale Transporters, filed a replying affidavit sworn on 28<sup>th</sup> June 2024 by its Director, Salad Awale, stating that the applicant’s title to the suit properties were revoked as alluded to by a letter from the 3<sup>rd</sup> respondent dated 29<sup>th</sup> May 2017 referring to previous correspondence requiring compliance with the 1<sup>st</sup> respondent’s directions vide its letter dated 13<sup>th</sup> March 2017 (to “expunge from records the parcels MN/VI/1128-1132 which appear in the register as CR12875-12879”); that the subject matter of the suit was extinguished by revocation whereupon the cause of action ceased to exist; and that the application is against public interest as the same will hinder the 6<sup>th</sup> to 8<sup>th</sup> respondents from developing industrial parks on public land, which would spur economic development and create employment. They urged the Court to dismiss the applicant’s Motion with costs.
6. In support of the Motion, learned counsel for the applicant, M/s. Borona & Associates, filed written submissions dated 21<sup>st</sup> June 2024 citing the cases of *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR, highlighting the twin principles to be met for grant of stay orders or injunctive relief pursuant to rule 5(2) (b) of this *Court’s Rules* pending appeal; and *China Gezbouba Group v JTG Enterprises Limited & Another* [2024] KECA 610 (KLR), submitting that this Court may grant orders under rule 5(2) (b) on such terms as the Court may think just.
7. On his part, Mr. Emmanuel M. Makuto, learned Senior Litigation Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents, filed written submissions dated 28<sup>th</sup> June 2024 citing the cases of *S tanley*



- Kangethe Kinyanjui v Tony Ketter & 5 Others* (*supra*), submitting that, in dealing with rule 5(2)(b), the Court exercises original and discretionary jurisdiction; and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, submitting that any loss that would be suffered by the applicant can well be compensated by an award of damages. He urged us to dismiss the applicant’s Motion with costs.
8. Learned counsel for the 2<sup>nd</sup> Interested Party, M/s. Garane & Somane, filed written submissions and a list of authorities dated 28<sup>th</sup> June 2024. Counsel relied on the cases of *Trust Bank Limited & Another v Investech Bank Limited & 3 Others* [2000] eKLR, highlighting the principle that, in determining applications under rule 5(2) (b), the Court exercises both original and discretionary jurisdiction; and *Shah Munge & Partners v NSSF Board of Trustees & 3 Others* [2018] eKLR, submitting that failure to grant the orders sought in the applicant’s Motion would not render the intended appeal nugatory, and that compensation by an award of damages would suffice.
  9. When the applicant’s Motion came up for hearing on the Court’s virtual platform on 14<sup>th</sup> October 2024, learned counsel for the 6<sup>th</sup> respondent, Mr. Tajbhai, indicated that he had filed his written submissions and a response to the applicant’s Motion. Regrettably, though, counsel’s written submissions had not been brought to the Judges’ attention to this day. Suffice it to observe that all counsel for the respondents and the 2<sup>nd</sup> Interested Party made brief oral highlights of their submissions in opposition to the applicant’s Motion. Finally, it is noteworthy that the 1<sup>st</sup> Interested Party, the Embassy of Rwanda was unrepresented.
  10. The genesis of the intended appeal is the applicant’s petition dated 1<sup>st</sup> September 2017 to the Environment and Land Court at Mombasa in *ELC Petition No. 3 of 2020* in which the applicant challenged the 1<sup>st</sup> respondent’s decision to revoke the titles to the suit properties then held by the applicant. In addition, the applicant sought to prevent the 3<sup>rd</sup> and 4<sup>th</sup> respondents from effecting the 1<sup>st</sup> respondent’s decision, all on the grounds, inter alia, that it was the registered proprietor of the suit properties; that it has been in possession and occupation thereof, and had undertaken certain works and developments thereon; and that the 1<sup>st</sup> respondent’s conduct was discriminatory and infringed on its constitutional rights, and that it stood to lose substantially in the event that the 1<sup>st</sup> respondent’s decision remained in force and the titles in question stood revoked.
  11. Simultaneously with its petition, and before any responses thereto, the applicant filed a Notice of Motion dated 1<sup>st</sup> September 2017 (which is not contained in the record as put to us) at the ex parte hearing of which the ELC (M. Thande, J.) granted conservatory orders restraining the 3<sup>rd</sup> and 4<sup>th</sup> respondents from revoking the applicant’s titles to the suit properties pending further orders and directions at the mention scheduled for 18<sup>th</sup> September 2017; and further conservatory order restraining the 6<sup>th</sup> respondent from interfering with the applicant’s proprietary rights pending further orders and directions on 18<sup>th</sup> September 2017. The next step discernible from the record before us is that the interim orders aforesaid were extended by E. Ogola, J. on 16<sup>th</sup> October 2019 pending “conclusion of the “matter””.
  12. Next in the series of events is the applicant’s Notice of Motion dated 26<sup>th</sup> September 2023 supported by the annexed affidavit of its Director, Harji Govind Ruda, sworn on 26<sup>th</sup> September 2023 substantially restating the events leading up to the applicant’s Motion dated 26<sup>th</sup> September 2023 seeking, inter alia, conservatory orders “... restraining the 6<sup>th</sup> respondent from continuing with any further acts of trespass, encroachment, excavation or any other activities which interfere with the [applicant’s] proprietary rights”; and prohibitory orders preventing the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents from “... carrying out any further activities which include alienation, trespass, excavation and establishing any other physical



development that interfere with the [applicant's] proprietary rights". It also prayed that the costs of its application be provided for.

13. The applicant's Motion was opposed vide the "Amended Grounds of Opposition" dated 27<sup>th</sup> November 2023 as amended on 28<sup>th</sup> November 2023 and filed by the 5<sup>th</sup> respondent for and on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> respondents. In it, the respondents advanced 26 grounds on which the applicant's Motion was opposed, but which we need not recite in extenso.

In summary, their case was that the suit properties were compulsorily acquired vide Gazette Notice Nos. 248 and 249 of 18<sup>th</sup> January 1974 and that, therefore, they became public land.

14. By its ruling dated 8<sup>th</sup> May 2024, the ELC (S. Kibunja, J.) dismissed the applicant's Motion dated 26<sup>th</sup> September 2023 and directed that a mention date be fixed at the expiry of 45 days to take directions on hearing of the applicant's petition. In his ruling, the learned Judge observed:

"4. That considering the administrative actions already taken against the titles to the suit properties, and the public interest in the initiated or intended projects against the private interest of the petitioner in the suit properties, it is not lost to the court that the intended developments will not diminish, but rather add value to the suit properties. In this matter, the court finds the public interest outweighs the petitioner's private interest over the suit properties.

5. That further, the respondents herein are mostly government agencies, and if the petitioner was to succeed in the petition, it will not be without appropriate compensation, as the values of the suit properties will be easily ascertained and relevant orders issued."

15. Aggrieved by the learned Judge's decision, the applicant moved to this Court on appeal on 9 grounds, namely that the learned Judge erred in law and in fact: by finding that there were conservatory orders protecting the suit properties from interference, but proceeded to approve of the acts of encroachment and dispossession rendering the entire possession otiose; by failing to find that the 6<sup>th</sup> and 7<sup>th</sup> respondents were in violation of the conservatory orders; by finding that the intended development would not diminish but add value to the suit properties in the absence of any factual or evidential basis; by ignoring the conservatory orders in force; in placing reliance on extraneous evidence; by making findings not backed by law; by being speculative and unreasonable; and by failing to do justice to the applicant.
16. The applicable principles in exercise of the Court's unfettered discretion under rule 5(2) (b) of the [Court of Appeal Rules, 2022](#) to grant an order of stay or conservatory orders are well settled. Firstly, an applicant has to satisfy the Court that he or she has an arguable appeal. Secondly, an applicant has to demonstrate that, unless an order of stay or interim injunctive relief is granted, the appeal or intended appeal (if successful) would be rendered nugatory. These principles have been restated and enunciated by this Court in [Stanley Kangethe Kinyanjui v Tony Ketter & 5 others](#) [2013] eKLR.
17. That said, it is also imperative to point out that an arguable appeal is not one which must necessarily succeed, but one which is not frivolous and merits to be argued fully. Further, it is sufficient even if the appeal raises only one triable issue.
18. On the 2<sup>nd</sup> limb of the twin principle, namely the nugatory aspect, it was held in [Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others](#) (*supra*) that, whether or not an appeal will be rendered nugatory, depends on whether or not what is or ought to be stayed or restrained by way of injunctive relief, if allowed to happen, is reversible; or, if not reversible, whether damages would reasonably compensate



the aggrieved party. We are also guided by the observations made in *Reliance Bank Limited v Norlake Investment Limited* (2002) 1 EA 227 that factors which render an appeal nugatory are to be considered within the circumstances of each case and, in so doing, the Court is bound to consider the conflicting claims of both sides.

19. On the first limb of the twin principle with regard to the issue as to whether the applicant's intended appeal is arguable, counsel drew our attention to the 9 grounds of appeal which, according to counsel, are arguable and deserving of the Court's scrutiny.
20. On their part, counsel for the respondents and the 2<sup>nd</sup> interested party contended that the applicant's intended appeal is not arguable. To our mind, the grounds advanced for the intended appeal cannot, with all fairness, be wished away as undeserving of scrutiny by this Court. Put differently, they are not frivolous. However, whether or not the appeal will succeed is not for us to judge. All we need to say for the moment, as we hereby find, is that the appeal is arguable and, therefore, the applicant has satisfied the 1<sup>st</sup> limb of the twin principle for grant of conservatory orders under rule 5(2) (b) of the [Court of Appeal Rules](#).
21. Turning to the 2<sup>nd</sup> limb of the twin principle, the applicant's contention was that there is increased likelihood that the suit properties would be sold or leased to third parties; and that this would cause irreversible colossal loss and damage that cannot be compensated monetarily by the respondents.
22. On the other hand, the 5<sup>th</sup> respondent contended that any loss that would be suffered by the applicant can be compensated by an award of damages. Counsel for the 6<sup>th</sup> respondent submitted that the title to the suit properties had already vested in the County Government and that an industrial park was being set up. Put differently, the applicant's Motion for conservatory orders had already been overtaken by events. According to the 2<sup>nd</sup> Interested Party, compensation by damages would be a sufficient remedy in the event that this Court determines the applicant's intended appeal in its favour. According to counsel, the applicant's intended appeal, if successful, would not be rendered nugatory.
23. The term "nugatory" was defined in *Reliance Bank Ltd v Norlake Investments Ltd* [2002] 1 EA 227 at 232. The word does not only mean worthless, futile or invalid. It also means trifling.
24. We agree with counsel for the respondents and the 2<sup>nd</sup> Interested Party. To our mind, the value of the suit properties that have already changed hands is ascertainable, and the applicant can be adequately compensated by an award of damages in the event that its intended appeal succeeds, not to mention the statutory right to compensation on compulsory acquisition by the State of one's immovable property.
25. Having considered the applicant's Motion dated 3<sup>rd</sup> June 2024, the affidavits in support thereof and in reply thereto, the grounds on which it was contested, the rival submissions of learned counsel, the cited authorities and the law, we reach the inescapable conclusion that the applicant has failed to meet the conjunctive twin principles for grant of orders under rule 5(2) (b) of the [Court of Appeal Rules](#). Consequently, the applicant's Motion fails and is hereby dismissed with orders that each party shoulders their own costs of the application. Orders accordingly.

**DATED AND DELIVERED AT MOMBASA THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A. K. MURGOR**

.....

**JUDGE OF APPEAL**

**DR. K. I. LAIBUTA CArb, FCIArb.**

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**JUDGE OF APPEAL**

**G. W. NGENYE-MACHARIA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

