



**Ndatani Enterprises Company Limited & another v Railway
Housing Co-operative Society Limited (Civil Appeal (Application)
E649 of 2024) [2025] KECA 625 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KECA 625 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E649 OF 2024
J MOHAMMED, F TUIYOTT & GV ODUNGA, JJA
APRIL 4, 2025**

BETWEEN

NDATANI ENTERPRISES COMPANY LIMITED 1ST APPLICANT

TAITA CONSULATANTS COMPANY LIMITED 2ND APPLICANT

AND

RAILWAY HOUSING CO-OPERATIVE SOCIETY LIMITED RESPONDENT

(An application for stay of execution against the ruling and orders of the Environment and Land Court, Nairobi (L. M. Mbugua, J) dated 24th April 2009 in ELC Case No. 224 of 2009)

RULING

1. By a Notice of Motion dated 25th October 2024, the applicants seek stay of execution of the ruling and orders issued by the Environment and Land Court in Case No. 224 of 2009, the subsequent orders and proceedings pending the hearing and determination of this appeal.
2. The application was supported by an affidavit sworn by Alexander Muema Muthengi, the applicants' director, on 25th October 2024 in which he averred: that on 17th April 2023 the respondents filed a Notice of Motion dated 17th April 2023 seeking to cite him for contempt on allegations of non-compliance with the consent judgement dated 31st October 2017; that on 24th April 2024 the court issued a ruling in which it found the applicants in contempt of the court orders; that aggrieved, the applicants have filed this appeal; that on 20th June 2024, the applicants filed an application seeking for stay of the orders of 24th June 2024 and all consequential orders including the Notice to Show Cause pending the hearing and determination of the appeal which application was dismissed on 17th October 2024; that in the Notice to Show Cause, he was required to show why he should not be punished for being in contempt of court; that should the said Notice to Show Cause be allowed to proceed this appeal will be rendered nugatory as the applicants' directors risk being sentenced before the appeal is



heard and determined; that in that event, the applicants will be denied an opportunity of ventilating their appeal and the deponent's professional standing as an accountant and a distinguished scholar will be ruined; that the appeal is arguable since there are no court orders dated 31st October 2017 on which the application dated 17th April 2023 were premised; that the ruling of 24th April 2024 cited the deponent who was not a party to the proceedings before the trial court; and that the deponent has complied with the consent judgement.

3. The application was opposed by an affidavit sworn by Aggrey Ogutu, the respondent's treasurer in which he deposed: that subsequent to the delivery of the ruling of 24th April 2024, the applicant forwarded to the respondent 124 title deeds to enable the respondent proceed with transfer of the title deeds to the purchasers; that the applicants have no reason for seeking stay of proceedings when the matter is moving forward; that the grant of the stay sought is likely to deny the respondent's clients their rights to execute the judgement as ordered by the trial court; and that no compelling reasons have been advanced for the grant of the orders sought.
4. We heard the application on 19th November 2024 when learned counsel, Dr Khaminwa, appeared for the applicant while Ms Gideon appeared for the respondent. We have considered the submissions which we need not rehash here.
5. We have, in addition, considered the application and the affidavits in support of and in opposition thereto. It is trite law that in an application of this nature an applicant must satisfy the Court that the appeal or intended appeal is arguable, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR. An applicant need not prove a multiplicity of arguable grounds, even one will suffice.
6. The applicants contend that the Notice to Show Cause is directed at a non-party to the proceedings and that the order alleged to have been disobeyed is non-existent. We are satisfied that the intended appeal is arguable. We need not say more at this juncture so that we do not embarrass the bench that will hear the appeal.
7. On the nugatory aspect, we are satisfied that unless the orders sought are granted, the applicant may be committed to jail, an eventuality that is likely to render the appeal nugatory, since the appeal is challenging the very finding of disobedience of the court order. In reaching this decision it is not lost on us that it may seem inimical to the preservation of the dignity of the courts and the administration of justice to postpone the day of reckoning of a contemnor. Yet in this instance, we are swayed towards giving the applicant some relief, even if it eventually turns out to be temporary, because the respondent concedes that there has been some compliance of the court order after delivery of the ruling sought to be stayed.
8. Consequently, we allow this application and grant the orders as sought.
9. We make no orders as to costs.
10. The costs of the application will be in the appeal.
11. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL, 2025.

JAMILA MOHAMMED

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JUDGE OF APPEAL



F. TUIYOTT

.....

JUDGE OF APPEAL

G.V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

