



**Rono & another v Lagat & another (Civil Application
E013 of 2024) [2025] KECA 626 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KECA 626 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E013 OF 2024
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA
APRIL 4, 2025**

BETWEEN

EMILY JEBOR RONO 1ST APPLICANT

ANDREW KOSKEI 2ND APPLICANT

AND

ESTHER JEPTANUI LAGAT 1ST RESPONDENT

JOEL K KEINO 2ND RESPONDENT

(An application for injunction pending the filing and determination of an intended appeal from the ruling and order of the High Court of Kenya at Eldoret (S. M. Githinji, J.) delivered on 30th April 2020 in Succession Cause No. 201 of 2009)

RULING

1. Before us is the applicant's Notice of Motion dated 15th March 2024 made under Rule 5(2) (b) of the [*Court of Appeal Rules*](#) seeking inter alia:
 1. ... Spent.
 2. That this Honourable Court be pleased to grant an Order of injunction to restrain the Respondents, their servants and or agents and or any other persons claiming through them from trespassing, ploughing, cultivating, constructing structures, surveying, demarcating, tilling and or in any other manner dealing with all that said piece of land known as Nandi/Chemuswo/530 pending the hearing and determination of the Applicant's application for the grant of the leave of this court to appeal, to file notice of appeal and the record of appeal out of time is heard and determined by this Honourable Court or until further or other orders of the court.



3. That this Honourable Court do issue an order of inhibition against the said Nandi/Chemuswo/530 from being transferred, leased and or charged or at all by the 1st Respondent pending the hearing and determination of the Intended Appeal.
4. That the costs of this Application be provided for.
2. The application is supported by the grounds espoused in the body of the application together with the annexed affidavit of Andrew Kosgey, the second applicant, sworn on 15th March 2024. The main grounds raised by the applicant are: that their former advocates did not notify them that the ruling had been delivered on 30th April 2020 yet they had written letters to the advocates to advise them on the position of the ruling; that they were surprised to see one Japhet Chumo grazing on the suit land namely Nandi/Chemuswo/530; that the said Japhet Chumo informed him that a ruling was delivered in favour of the respondents; that he visited his former advocates who still insisted that the ruling had not been delivered; that out of abundance of caution, the applicants lodged a notice of appeal on 11th May 2020; that though their movements were restricted by the outbreak of Covid 19 pandemic, they wrote letters to their erstwhile advocates to confirm whether they had filed an appeal; they had since filed an application for extension of time; that in the meantime, they filed this application for injunctive orders to preserve the subject matter of the appeal as they now face imminent eviction; and that the appeal would be rendered nugatory unless the injunctive orders were granted.
3. We note that this application arises from the ruling of the High Court (S. M. Githinji, J.) which was a succession dispute. The learned judge held that the deceased, who was polygamous, had made good and fair arrangements on how he intended his family to live. For those reasons, the learned judge dismissed the applicants' application for revocation of the grant.
4. As already noted, the applicants are aggrieved by the said ruling.

They filed a notice of appeal dated 11th May 2020 and an application for extension of time. When the present application was called out for hearing on 11th March 2025, neither the applicants nor the respondents were present, though duly served with the day's hearing notice. The applicant's advocates, K. K. Arap Sego & Co. Advocates, filed written submissions dated 5th April 2024. The Court opted to consider those submissions in accordance with Rule 58 of the *rules of this Court*. In their submissions, it is argued that the applicants have an arguable appeal with chances of success, and that the appeal will be rendered nugatory unless the order for injunction is granted as they will be evicted from the suit property. The respondents on their part elected not to neither file a response to the application, nor written submissions. That regardless, the Court must consider the merits or otherwise of the application.
5. To succeed in an application under Rule 5(2) (b) of the *Court of Appeal Rules*, an applicant has to satisfy the twin principles that are enumerated in many decisions of this court, namely:
 - i. An applicant must demonstrate that they have an arguable appeal; and
 - ii. That the intended appeal (or appeal if already filed) will be rendered nugatory if the execution of the decree, order or proceedings is not stayed.
6. On the first limb of this twin principle, this Court held in *David Morton Silversein vs. Atsango Chesoni* [2002] eKLR that, for an order of stay to issue, the applicant must first demonstrate that the appeal or intended appeal is arguable, that is, it is not frivolous and that the appeal or intended appeal, would in the absence of stay, be rendered nugatory.



7. Regarding the sufficiency of the pleaded grounds of appeal to warrant a grant of the stay of the orders sought, this Court in *Yellow Horse Inns Ltd vs. A.A Kawir Transporters and 4 others* [2014] eKLR observed that an applicant need not show a multiplicity of arguable points as one arguable point would suffice. Neither is the applicant required to show that the arguable point would succeed as held by this Court in *Kenya Commercial Bank Limited vs. Nicholas Ombija* [2009] eKLR.
8. On the arguability of the appeal, the applicants have raised a number of grounds in their memorandum of appeal dated 15th March 2024. Though the applicants have listed a whopping 26 grounds of appeal, it is not necessary to set them out as the applicants have a hurdle to clear first. The applicants admit that this being a succession matter, leave of the High Court or this Court, if the High Court declines to give leave, is necessary. The applicants have expressly stated that they did not seek leave. (See *Mughal & Rashid (Suing as the legal representatives of the Estate of the Late Rashid Mughal) & another vs. Mohammed Shabir Bhola* [2025] KECA 420 (KLR). That is a fatal mistake that makes this application incompetent. So it is not even necessary to consider whether the applicant has met the twin principles for grant of stay under rule 5(2)(b) as the application is a nonstarter and can only head one way; a dismissal.
9. The upshot of the foregoing is that the present application is incompetent. Consequently, we dismiss the application with no orders as costs.

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

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C. Arb, FCI Arb.

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

