



**Almer Farm Limited v Rono (Sued as the Executrix of the Estate of the Late David Rono)
(Civil Application E016 of 2025) [2025] KECA 871 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 871 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E016 OF 2025
JM MATIVO, PM GACHOKA & WK KORIR, JJA
MAY 23, 2025**

BETWEEN

ALMER FARM LIMITED APPLICANT

AND

**BETTY RONO (SUED AS THE EXECUTRIX OF THE ESTATE OF THE LATE
DAVID RONO) RESPONDENT**

*(An application for stay of proceedings from the ruling and order
of the Environment and Land Court at Kitale (C.K. Nzili, J.)
delivered on 5th February 2025 in ELC Misc. App No. E015 of 2024)*

RULING

1. In its Notice of Motion dated 13th March 2025, the applicant invoked rules 5 (2) (b) and 42 of this Court's Rules 2022 seeking a stay of proceedings in Kitale ELC Misc. App. No. E015 of 2024; Betty Rono (suing as the executrix of the estate of the late David Rono) vs. Almer Farm Limited pending the hearing and determination of an intended appeal against the ruling dated 5th February 2025 dismissing the Notice of Preliminary Objection dated 13th November 2024 in Kitale Misc. Application No. E015 of 2024; Betty Rono (suing as the executrix of the estate of the late David Rono) vs. Almer Farm Limited. The application is supported by the grounds on its face and the affidavit of Joseph Yego, sworn on 13th March 2025. It has not been disclosed how the said Joseph Yego is associated with the applicant.
2. The gist of the Motion is that the respondent filed an application dated 7th November 2024 seeking to adopt the award by the National Land Commission, Historical Injustice Committee given on 7th February 2019 and gazetted on 1st March 2019 in Kitale Misc. Application No. E015 of 2024; Betty Rono (suing as the executrix of the estate of the late David Rono) vs. Almer Farm Limited. The respondent further prayed for an order that the Land Registrar and County Surveyor Trans Nzoia



County, on behalf of the Chief Land Registrar and Director of Survey, curve out the 400 acres from L.R. No. 8940 within Cherangany sub- county.

3. That application galvanized the applicant herein to file a Notice of Preliminary Objection dated 13th November 2024. In it, the applicant urged the trial court to strike out the respondent's application on grounds that a similar word for word application dated 11th October 2022 had been filed by the respondent in Kitale ELC JR No. 4 of 2019; Betty Rono (suing as the executrix of the estate of the late David Rono) vs. Almer Farm Limited.

The court in that matter dismissed the application on 1st October 2024.

4. The applicant lamented that in spite being notified that the latter application was res judicata, the trial court dismissed their preliminary objection on 5th February 2025. Furthermore, the trial court went ahead to determine the application without affording the respondent an opportunity to be heard. This is because the trial court initially informed parties that the preliminary objection would be heard first. However, the court went against its directions by determining the preliminary objection and the application simultaneously.
5. The applicant is aggrieved. It filed its notice of appeal dated 7th February 2025 seeking to overturn that decision. It has since filed an application for review dated 7th February 2025 whose ruling date was reserved for 14th May 2025. Additionally, the trial court had since stayed execution of the orders issued on 5th February 2025. The applicant annexed its draft memorandum of appeal to submit that it has an arguable appeal raising 12 grounds which can be summarized as follows: that the learned judge did not apply his mind to the well settled principles of res judicata; that by virtue of section 79 (1) of the Evidence Act, the ruling in ELC JR. NO. 4 of 2019 is a public document which the judge ought to have taken into account even if it was not annexed to the applicant's application; and that the impugned ruling violated the constitutional principles on the right to a fair hearing and the provisions of the Evidence Act.
6. The applicant also stated that the appeal would be rendered nugatory if stay is not granted as it will defeat the purpose of its intended appeal. Finally, it stated that the application was compelling and urgent and the court needs to intervene. That this would save the applicant from a serious malpractice whose consequence would be to evict over 1000 people from the property based on two conflicting decisions in the same matter.
7. The respondent did not file any response to the application. The application was nonetheless heard virtually on 8th May 2025. Learned Counsel for the applicant Mr. Justus Obuya was present. The respondent was absent in spite of being duly served with the day's hearing notice.
8. The applicant highlighted its written submissions dated 26th March 2025 to state that the appeal was arguable and would be rendered nugatory if stay was not granted. Learned Counsel conceded that there were no adverse orders in force. However, he argued that staying the proceedings was necessary since the proceedings sought to be stayed will be res judicata. Finally, Learned Counsel contended that though the applicant did not attach the pleadings the subject of Kitale ELC JR No. 4 of 2019; Betty Rono (suing as the executrix of the estate of the late David Rono) vs. Almer Farm Limited, it was incumbent on the trial court to establish the veracity of their allegations by calling on the file.
9. We have considered the application, the affidavit in support and the annexures thereto. We have also examined the applicant's written submissions and analyzed the law. To succeed, an applicant must satisfy the following twin conjunctive principles in an application under rule 5 (2) (b) of this Court's rules: the appeal is arguable and would be rendered nugatory if stay is not granted.



10. On the arguability of the appeal, it is trite law that an arguable appeal does not necessarily mean one which will succeed [See Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] KECA 701 (KLR)]. Furthermore, the applicant needs to only demonstrate that only one ground is arguable. In this case, the applicant has annexed its draft memorandum of appeal. In that regard alone, we find that the appeal is arguable and move to the second limb.
11. Turning to the nugatory aspect, this Court in Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others [2013] KECA 378 (KLR) held that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved. In this case, the applicant informed the court that there were no adverse orders against it. We note that in paragraph 1 (g) of the supporting affidavit, Mr Yego, the deponent, states as follows; “that there are presently no adverse orders. However, it is necessary that the proceedings in Kitale Misc App No E015 OF 2024 be stayed...” Furthermore, the applicant had since obtained stay orders from the trial court. In its written submissions dated 26th March 2025, the applicant states as follows... “the applicant has filed an application dated 7.02.2025 seeking a review of the ruling allowing the application dated 1.10.2024...the court has since stayed execution of the orders issued on 05.02.2025 and scheduled the matter for ruling on 14.05.2025.”
12. The present application has a date similar to the applicant’s notice of appeal. It is apparent that the applicant has elected to pursue an appeal before this court and review those same orders at the trial court. The applicant appears to be engaging in a fishing expedition. It has pursued both an appeal and an application for review against the same orders and we are not persuaded that the intended appeal will be rendered nugatory in the circumstances.
13. In view of the above, we come to the inescapable conclusion that the Notice of Motion dated 13th March 2025 lacks merit. It is hereby dismissed but with no orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 23RD DAY OF MAY 2025.

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C. Arb, FCIArb.

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

