



**Patel & another v Mbaria & 6 others (Civil Application
E634 of 2024) [2025] KECA 1118 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1118 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E634 OF 2024
W KARANJA, K M'INOTI & P NYAMWEYA, JJA
JUNE 20, 2025**

BETWEEN

VITUL PATEL 1ST APPLICANT

SWASTIK HOLDINGS LIMITED 2ND APPLICANT

AND

ROSEMARY WANJIKU MBARIA 1ST RESPONDENT

ROSE MUMBI MBOCHA 2ND RESPONDENT

PAULINE KAGURE KIMANI 3RD RESPONDENT

CHIEF LAND REGISTRAR 4TH RESPONDENT

DIRECTOR OF SURVEYS 5TH RESPONDENT

NEW LORESHO ESTATE ASSOCIATION 6TH RESPONDENT

STEPHEN GICHUKI NDIRITU 7TH RESPONDENT

*(An application for stay of execution pending appeal from the
Ruling of the Environment and Land Court at Nairobi (Justice
L.Mbugua J), dated 30th October 2024 in ELC Case No. E131 of 2024)*

RULING

1. The applicants herein seek to stay the proceedings, and execution of a ruling delivered on 30th October 2024 by the Environment and Land Court at Nairobi (L. Mbugua J) in ELC Case No. E131 of 2024. The learned Judge of the Environment and Land Court (hereinafter “the ELC”) in the impugned ruling dismissed the applicants’ preliminary objection that the ELC had no jurisdiction to hear the 1st respondent’s suit for reasons that the issue of the ownership and the correct land title of the suit property, being Land Reference Number 21080/26, was res judicata and had been conclusively decided



- in Nairobi ELC Case No. E369 of 2022 and by the Court of Appeal in a ruling in Nai Civil Application No. E002 of 2023, and that the issues raised on determination of boundary demarcation lay squarely within the mandate of the Land Registrar as provided under section 18 of the [Land Registration Act](#).
2. The learned Judge also allowed an application that had been filed by the 1st respondent in the impugned ruling, and granted orders directing the 4th and 5th respondents herein to establish the abutments and boundaries of the Land Reference No. 21080/44 in contradistinction to the Land Reference numbers of the properties surrounding it and avail a report to the said Court, and for maintenance of status quo on the terms that no activities including constructions were to be undertaken on the disputed properties.
 3. The applicants' have lodged the application for stay of proceedings and execution dated 14th November 2024 in this Court pursuant to Rule 5(2)(b) of the [Court of Appeal Rules](#) of 2022. The application is supported by an affidavit of even date sworn by Satishchandra Rameshbhai Patel, the Managing Director of the 2nd applicant, and submissions dated 15th January 2025 filed by their advocates.
 4. The respondents opposed the application by way of a replying affidavit sworn on 21st January 2025 by Rosemary Wanjiku Mbaria, the 1st respondent herein, and two sets of submissions, the first dated 24th January 2025 filed by the 1st respondent's advocates; and the second dated filed by the 6th respondent's advocates.
 5. We heard the application on 28th January 2025 on this Court's virtual platform, and learned counsel Mr. Manwa appeared for the applicants; learned counsel Mr. Micheal Chege, holding brief for learned counsel Mr. Issa Mansur, appeared for the 1st respondent; while learned counsel Mr. Gecaga holding brief for learned counsel Mr. Karongo, appeared for the 6th respondent. There was no appearance for the 2nd to 5th respondents despite their advocates having been duly served with the hearing notice.
 6. In summary, the applicants' case is that the aspects of fraud, illegality, irregularities and corruption associated with the ownership of Land Reference Number 21080/26 were raised by the 1st respondent so as to remove the dispute from the jurisdiction of the Land Registrar and to avoid dismissal by dint of the doctrine of res judicata. Their intended appeal is therefore arguable, since the ELC will proceed to hear and determine a suit in which it has arrogated itself jurisdiction not conferred by the law. Further, unless the proceedings of the ELC are stayed, the ELC will proceed and determine the matter on merits making the intended appeal nugatory.
 7. Mr. Manwa reiterated these arguments in his submissions, and relied on the decisions of this Court on the grant of stay of execution in [Stanley Kangethe Kinyanjui v Tony Ketter & 2 Others](#) [2013] eKLR, [Akban Holdings Limited & another v National Social Security Fund Board of Trustees](#) [2020] eKLR and [National Bank of Kenya Limited v Loenard G. Kamweti](#) [2015] eKLR, and of the Supreme Court on jurisdiction in [Samuel Kamau Macharia & another v Kenya Commercial Bank and another](#) [2012] eKLR.
 8. The 1st respondent on her part detailed the events leading to her purchase of Land Reference Number 21080/44 and averred that the applicants trespassed on the said parcel of land and pulled down her boundary fence, after claiming that it was in Land reference Number 21080/26 purportedly owned by the 2nd applicant, whereupon she filed the subject suit in the ELC. The 1st respondent's case is that the said parcel of land known as Land Reference number 21080/26 is a fictitious parcel of land, and she detailed the alleged fraudulent transactions leading to the creation of the said title.
 9. She also averred that she was not a party in Nairobi ELC Case No. E369 of 2022, and a number of issues she has raised in her suit, including the claim that the applicants have trespassed on LR No. 21040/44 and the claim that the 2nd applicant does not have proper root of title, were not subject of the judgment



of the court in the aforementioned case, and that her suit is hence not res judicata. Furthermore, that the ELC's jurisdiction to hear and determine her suit has not been ousted by section 18 of the Land Registration Act in view of the issues of fraud pleaded in the suit.

10. The 1st respondent therefore contended that the appeal does not raise any arguable issues, and will not be rendered nugatory, as the orders sought are aimed at preventing the ELC from making the conclusion that the 2nd applicant does not have proper root title and LR No. 21040/26 is a fictitious and non-existent title. In any event that the applicants will not suffer any prejudice since the ELC decision will be set aside if their appeal succeeds, while on the other hand, that the applicants have taken over possession of the 1st respondent's property and part of the 2nd applicant's perimeter wall has been constructed in front of her main gate, blocking access to the property.
11. Mr. Chege reiterated these averments while citing the decisions of this Court in African Safari Club Limited v Safe Rentals Limited (2010) eKLR, David Morton Silverstein v Atsango Chesoni (2002) I EA 296 and Karolyne Mwachia Mburu & 2 others v Athi Water Services Board & Another (2022) eKLR and of the Supreme Court in Dina Management Company v County Government of Mombasa & 5 Others SC Petition No. 8 (E010) of 2021, and submitted that the applicants had failed to satisfy the two tests for grant of the orders for stay.
12. A similar position was taken by Mr. Gecaga, who relied on the replying affidavit filed by the 1st respondent to submit that the intended appeal does not raise any arguable issues as the 1st respondent has demonstrated that the suit is not solely about the boundary dispute and extends to other legal issues, and that the suit at the ELC did not satisfy all the elements of res judicata espoused by this Court in The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others [2017] eKLR. In addition, that an order of stay of proceedings is an exceptional remedy as it curtails the right to an expeditious hearing and is to be granted sparingly, and if the ELC proceeds and renders judgment the applicants still have the opportunity to appeal and will not suffer prejudice.
13. We have carefully considered the application, together with the averments and submissions made by the parties. The principles applicable in the exercise of this Court's discretion under Rule 5 (2) (b) of the Court of Appeal Rules of 2022 to grant a stay of execution, injunction or stay of proceedings are well settled. An applicant has to satisfy two requirements. Firstly, that he or she has an arguable appeal. Secondly, that unless an order of stay is granted, the appeal or intended appeal would be rendered nugatory. These principles have been restated and amplified by this Court in Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others (*supra*).
14. Both limbs must be demonstrated before a party can obtain a relief under rule 5(2) (b) (see Republic v Kenya Anti-Corruption Commission & 2 others (2009) KLR 31; Reliance Bank Ltd v Norlake investments Ltd (2002) I EA 227 and Githunguri v Jimba Credit Corporation No (2) (1988) KLR 838). In addition, this Court exercises original jurisdiction under Rule 5 (2)(b) as held in Ruben & 9 others v Nderitu & another (1989) KLR 459 and Trust Bank Limited and Another v Investech Bank Limited and 3 Others (2000) eKLR.
15. Bearing in mind that the requirement of arguability of an intended appeal is met if it raises a bona fide issue worth of consideration by the Court (see Kenya Tea Growers Association & Another v Kenya Planters Agricultural Workers Union, Civil Application No. Nai. 72 of 2011 UR), we note that the applicants have challenged the jurisdiction of the ELC to hear and determine the 1st respondent's suit. We are satisfied that this is an arguable point.
16. As to whether the intended appeal will be rendered nugatory, an appeal or intended appeal will be rendered nugatory where the resulting effect of not granting a stay of execution, injunction or stay of proceedings is likely to be irreversible or, if it is not reversible, where damages will not reasonably



compensate the party aggrieved (see *Stanley Kangethe Kinyanjui v Tony Keter & 5 others* Civil (*supra*)). Hence the various decisions of this Court that the purpose of a remedy under rule 5(2) (b) is to preserve the subject matter of the appeal.

17. In the present application, it is notable that the ELC did order that the issue of the boundary determination proceeds before the Land Registrar which is the appropriate fora, and that the status quo be maintained in the meantime. These orders in our view adequately addresses any prejudice that may be suffered by either party pending the hearing and determination of the intended appeal. It is also notable that the applicants still have an opportunity to appeal any decision that the ELC may make on the issues it found were not res judicata.
18. We accordingly find that the applicants have not satisfied the second limb for the grant of orders of stay, namely that their intended appeal will be rendered nugatory. The application dated 14th November 2024 is accordingly found not to have merit, and is hereby dismissed with costs to the 1st and 6th respondents.
19. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2025 WANJIRU KARANJA

.....
JUDGE OF APPEAL

K. M'INOTI

.....
JUDGE OF APPEAL

P. NYAMWEYA

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

