



**Muriuki & 2 others v Ngari (Civil Application E113 of 2024)  
[2025] KECA 1074 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1074 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E113 OF 2024  
JW LESSIT, A ALI-ARONI & GV ODUNGA, JJA  
JUNE 5, 2025**

**BETWEEN**

**MARY WANJIRU MURIUKI ..... 1<sup>ST</sup> APPLICANT**

**JANE WANJIRU MURIUKI ..... 2<sup>ND</sup> APPLICANT**

**FRANK MURIMI KARANI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MERCY WANGITHI NGARI ..... RESPONDENT**

*(Being an application for stay of execution pending the hearing and determination of an appeal from the Judgment and Decree of the High Court at Kerugoya (F. Muchemi, J.) delivered on 26th October, 2023 in H.C. Civil Appeal No. 20 of 2019.)*

**RULING**

1. The applicant has brought a Motion dated 24<sup>th</sup> October 2024, under rule 5 (2) (b) of the Court of Appeal Rules and seeks two orders: a temporary stay of execution of judgment and decree of F. Muchemi, J. delivered on 26<sup>th</sup> October 2023 pending the hearing and disposal of Civil Appeal No. E150 of 2024; and stay of further proceedings in Kerugoya Chief Magistrates Succession Cause No. 73 of 2017 particularly in execution of Certificate of Confirmed Grant issued on 2<sup>nd</sup> April 2019 pending the hearing and determination of the appeal.
2. It is important to give a brief background of the case in order to contextualize the application. The appeal arises from the judgment of the High Court at Kerugoya in a first appeal against the judgment of the Chief Magistrates Court at Kerugoya in a Succession Cause No. 73 of 2017 arising from a Succession Cause in the estate of deceased Grace Wangechi Hinga. Judgment was delivered in favour of the respondent herein, and a certificate of confirmed grant was issued directing that parcel No. LR .Mwerua/Kanyokora/975 (suit land) registered in the 2<sup>nd</sup> applicant's name be shared equally



between the 2<sup>nd</sup> applicant and the respondent. The 2<sup>nd</sup> applicant was aggrieved by the judgment and decree thereof and duly appealed against the whole judgment vide Nyeri C.A No. E 150 of 2024 and which appeal is pending hearing and determination.

3. In this application, the 2<sup>nd</sup> applicant contends that the respondent has now applied to the trial court to have the certificate of confirmed grant executed while the appeal is pending; which, if not stayed will cause him a substantial loss in that he had purchased the entire land from the deceased and has a valid title deed.
4. We heard this application on 21<sup>st</sup> January 2025. Learned counsel Mr. Kahiga appeared for the 2<sup>nd</sup> applicant while the respondent appeared in person. The 1<sup>st</sup> applicant, we were informed, did not participate in the proceedings.
5. Mr. Kahiga, representing the applicant, highlighted his submissions and urged that his client had purchased the suit property from the deceased, who was the registered owner of the suit land, in 2002. She died in 2005 before the suit land was transferred to him. The 1<sup>st</sup> applicant, a daughter of the deceased, started Succession in her deceased mother's estate in 2005 and completed and transferred the suit land to the 2<sup>nd</sup> applicant in 2016. The 2<sup>nd</sup> applicant also got the title. The respondent filed a protest in 2017, which was allowed, and an order was made stating that the suit land be shared equally between the respondent and the 2<sup>nd</sup> respondent. Counsel urged that the 2<sup>nd</sup> applicant stands to suffer if the grant is executed, affecting his title to the suit land. He urges that if the land is sold to third parties, he may not recover, rendering his appeal nugatory.
6. The respondent also highlighted his submissions and urged that the 1<sup>st</sup> applicant did not involve him when she sold the property to the 2<sup>nd</sup> applicant, stating that he is desirous of having his share of the property. He admitted that the 2<sup>nd</sup> applicant was in possession of the suit land.
7. We have considered the application and the rival submissions of counsel to the 2<sup>nd</sup> applicant and the respondent. This Court's jurisdiction to stay the impugned judgment and decree is contingent on a notice of appeal having been filed against the said judgment pursuant to rule 77 of the Court of Appeal Rules. This requirement is prescribed by rule 5 (2) (b) of the Rules and was confirmed by this Court in *Halai & Another vs Thornton & Turpin (1963) Ltd (1990) KLR 365*. We are satisfied that the application is competent as the applicant has demonstrated that he filed a notice of appeal and has since filed Civil Appeal No. E150 of 2024.
8. What the applicant needs to demonstrate in order to obtain the orders sought is the fulfilment of the twin principles: one that the appeal is arguable and two that it is likely to be rendered nugatory if the application is declined and the appeal were to subsequently succeed. What is arguable was explained in the case of *Somak Travels Ltd vs Gladys Aganyo [2016] eKLR*, this Court held:

“It is trite law that the applicant need not show a multiplicity of arguable points. One arguable point is sufficient to satisfy the first principle. In addition, an arguable point is not necessarily one that must succeed on appeal, but one that merits a consideration and determination by this Court. While it would have been desirable for the applicant to annex a draft proposed memorandum of appeal to its application, we are of the view that the omission to do so is not fatal, and is curable in so far as the applicant has sufficiently set out its grievances on the face of the application. That is the case in this application.”

9. The 2<sup>nd</sup> applicant has already filed his appeal. However, he did not annex the memorandum of appeal or the record of appeal itself. We do not have the advantage of seeing the grounds and/or issues raised in the appeal. That notwithstanding, we have carefully considered the application, the grounds on the



face of it and the supporting affidavit and find that the application is not idle. For instance the 2<sup>nd</sup> applicant obtained title to the suit land following Succession proceedings by a daughter of the deceased who transferred the property to him, honouring the fact that her deceased mother had sold the land to him 14 years earlier. The 2<sup>nd</sup> applicant is in possession of the suit land and has a title too. We find that the first principle has been satisfied.

10. Regarding the second principle of whether the appeal will be rendered nugatory if the order for stay is not granted and the appeal succeeds, we are guided by the decision in Stanley Kangethe Kinyanjui vs. Tonny Keter & Others [2013] eKLR where the court summarized what should guide the court as follows:
  - xii. The term ‘nugatory’ has to be given its full meaning. It does only mean worthless, futile or invalid. It also means trifling.
  - xiii. Whether or not an appeal will be rendered nugatory depends on whether what is sought to be stayed if allowed to happen will be reversible, or if it is not reversible whether damages will reasonably compensate the party aggrieved.
  - ix. Where it is alleged by the applicant that the appeal will be rendered nugatory on account of the respondent’s impecuniosity, the onus shifts to the latter to rebut by evidence the claim.”
11. The 2<sup>nd</sup> applicant contends that he is apprehensive that unless this Court grants stay of execution of the impugned judgment; his appeal will be rendered nugatory. That the respondent has moved back to court to have the confirmed grant executed, meaning the 2<sup>nd</sup> applicant’s title will be affected. We agree that such a move may render the appeal nugatory if the appeal were to succeed and in the meantime the suit land changes hands to third parties thus getting beyond the reach of the 2<sup>nd</sup> applicant. Furthermore, we are satisfied that the respondent does not stand to suffer any prejudice if the stay is granted, given the admission he has made that the 2<sup>nd</sup> applicant has title to the suit land and is also in possession.
12. The upshot of this application is that we are satisfied that the 2<sup>nd</sup> applicant has established the twin principles as required under Rule 5(2) (b) of this Court Rules. We order that:
  - A. Pending the hearing and determination of the appeal of Civil Appeal No. E150 of 2024:
    - i. An order of stay of execution of the judgment and decree of the Kerugoya High Court Civil Appeal dated 2nd April 2019 do issue;
    - ii. An order of stay of further proceedings in Kerugoya Chief Magistrates Succession Cause No. 73 of 2017 particularly in execution of Certificate of Confirmed Grant issued on 2nd April 2019;
  2. The costs of this application shall be in the appeal.

**DATED AND DELIVERED AT NYERI THIS 5<sup>TH</sup> DAY OF JUNE, 2025.**

**J. LESIIT**

..... **JUDGE OF APPEAL**

**ALI - ARONI**

..... **JUDGE OF APPEAL**

**G.V. ODUNGA**

..... **JUDGE OF APPEAL**



I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

