



**Attorney General & 2 others v Mungania & 3 others (Civil Application
E121 of 2024) [2025] KECA 1438 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1438 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E121 OF 2024
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
JULY 31, 2025**

BETWEEN

THE HON. ATTORNEY GENERAL 1ST APPLICANT

THE ADMINISTRATION POLICE COLLEGE MERU 2ND APPLICANT

THE LAND REGISTRAR MERU 3RD APPLICANT

AND

JOSEPH NGULU MUNGANIA 1ST RESPONDENT

ZAKAYO MUGAMBI 2ND RESPONDENT

JOHN MUTURIA MUNGANIA 3RD RESPONDENT

PAULINE KENDI JULIUS 4TH RESPONDENT

*(An application for stay of execution of the Ruling and Orders of the Environment and Land
Court at Meru (Nzili, J.) delivered on 6th November 2024 in ELC Petition No. 10 of 2024)*

RULING

1. Before the court is an application by way of a notice of motion dated 21st November 2024, brought under Article 164(3)(a) of the *Constitution*, Sections 3, 3A and 3B of the *Appellate Jurisdiction Act* and Rule 5(2)(b) of the Court of Appeal Rules 2022, seeking a stay of execution pending the hearing and determination of the application and intended appeal.
2. The application is predicated on the grounds on the face of the application, and rehashed in the supporting affidavit of the 2nd applicant's legal officer, Juma Kendo, sworn on 22nd November 2024, wherein he deposes that the court issued conservatory orders to prevent the applicants from alienating L.R. Tigania/Nikirimanchuma/6 ("suit property"), and carrying out any developments on the same; the applicants dissatisfied with the ruling, filed a notice of appeal and served it on all the respondents,



and have requested for proceedings; their intended appeal raises arguable points and has a high chance of success; without a stay of execution, the appeal's outcome is likely to be undermined, resulting in likely serious and irreversible national security implications; and it is in the greater public interest that the orders sought be granted.

3. The 1st respondent has filed a replying affidavit on his behalf and that of his co-respondents, sworn on 2nd December 2024 in response to the application. He deposes that the application lacks merit, is an abuse of the court process, and warrants dismissal with costs. He further avers that the main petition is pending hearing; and the application only aims to delay the hearing of the petition; the applicants have failed to provide evidence in support of their allegations, which in any event should be addressed in the main petition; additionally, the impugned ruling is meant to preserve the subject matter; staying it would render the main petition nugatory; the application and intended appeal reflect bad faith and seek to hold the respondents' hostage; further, the applicants have not demonstrated that the intended appeal is arguable or likely to succeed, nor have they shown how they will suffer prejudice if the orders sought are not granted; the applicants falsely claim ownership of suit property which Kirimanchuma Primary School owns; the proposed developments are illegal; the applicants are asking this Court to sanitize an illegality by allowing them to proceed with the said illegal developments; they have failed to meet the conditions necessary for a stay to be granted, the application is an afterthought, poorly supported, and constitutes an abuse of court process, and it is in the public interest for the court not to grant a stay of execution.
4. Counsel for the applicants filed submissions dated 2nd December 2024. He relied on Section 42, Rule 6(2) of the Civil Procedure Rules, 2010 and cited the case of *Butt vs. Rent Restriction Tribunal* [1979] eKLR, where this Court set the principles to be considered in granting a stay including; the need to ensure the appeal will not be rendered nugatory, more particularly where there are reasonable grounds and exceptional circumstances and unique requirement. Counsel contended that school children will be deprived of free lunch provided by the Administrative Police College and access to the college's hospital healthcare services, which include outpatient and maternity care, further the application was filed without undue delay.
5. Counsel further submitted that no alienation of public land has been done to private entities; the suit property is under the Meru County Government, which holds the land in trust for the Primary School, and the Meru County Government did the resultant subdivisions with the full consent and authority of the Kirimanchuma Primary School Board.
6. Concerning the African Independent Pentecostal Church of Africa (A.I.P.C.A.), learned counsel contended that it has occupied the land for over 50 years and has contributed to building infrastructure for Kirimanchuma Primary School; no alienation has occurred to deprive the school of its land, and if additional reservations have been made, it is to benefit both the church and the Administrative Police College Meru; and aligning with the land's educational purpose.
7. In opposition, learned counsel for the 1st to 4th respondents filed submissions dated 5th December 2024, urging that for conservatory orders to be granted, the applicant must show a prima facie case with a likelihood of success; it must also demonstrate that not granting these orders could lead to real prejudice and further public interest must be considered, stating that the High Court granted the orders based on the inherent merit of the case, considering public interest and proportionality. In support of this contention he relied on the case of *Haki Ya Sheria International vs. Inspector General of Police and Others* Petition No. 5 (E007) of 2021 KESC 22 (KLR) (44) 3rd December 2021, where the court cited the case of *Nubian Rights Forum & 2 Others vs. A.G & Others* [2019] eKLR, where the public interest was defined as a matter affecting public or general interest of a community's legal rights. In the instant case, learned counsel submitted that the petition was presented on behalf of citizens,



- parents, pupils, and the school community, emphasizing its public interest nature. He also cited the case of *Kimathi Munjuri, Jacob Miriti & Another vs. Head of Public Service & Another* [2017] eKLR, in which the court stated that when considering whether to grant conservatory orders, a court should consider whether the case is arguable and whether the matter may be rendered nugatory.
8. Counsel also argued that alienation of public land and the conversion of the same to either private, public or community is governed by Articles 60, 61, 62, 63 and 64 of the [Constitution](#) of Kenya 2010, Sections 7 to 17 of the [Land Act](#) and the rules made there under, the National Land Commission (Review of Grant and Disposition of Public Land Regulations, 2017) and Section 16 to 35 of the [Land Registration Act](#).
 9. He contended that the alienation alluded to by the 2nd applicant involves land belonging to a public school in favour of third parties and unrelated to school use, such as security, and private use. Counsel further asserted that the intended alienation was done contrary to the law and in contravention of the respondents' constitutional rights. Furthermore, the learned Judge correctly found that the 2nd respondent did not confirm whether there had been an amendment to the Registry Index Map (RIM) in accordance with the new register of titles.
 10. To succeed in an application under Rule 5(2)(b) of the Court of Appeal Rules, an applicant has to satisfy the twin principles 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, or order of proceedings is not stayed.
 11. On the first limb of this twin principle, this Court held in *David Morton Silverstein vs. Atsango Chesoni* [2002] eKLR, that for an order of stay to be issued, the applicant must first demonstrate that the appeal or intended appeal is arguable, that is to say, the intended appeal is not frivolous and that the appeal or intended appeal, would absent stay, be rendered nugatory.
 12. This Court, in the case of *Yellow Horse Inns Ltd vs. A. A Kawir Transporters & 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 this Court held in *Kenya Commercial Bank Limited vs. Nicholas Ombija* [2009] eKLR.
 13. In their draft memorandum of appeal, the applicants have indicated that the learned Judge erred by finding the allocation of land to the appellant and two others to be erroneous and illegal; failed to consider the overwhelming public interest; and that the County Government of Meru participated in the public exercise, thereby granting conservatory orders and finding that the respondents' petition would be rendered nugatory.
 14. The threshold for an arguable point for appeal is very low, and in any event, it is the bench hearing the appeal that will, in the end, be considering whether the grounds are merited or not. At this stage, it suffices that the memorandum of appeal appears to have arguable point(s).
 15. On the 2nd principle, whether the appeal will be rendered nugatory, useless, overtaken by events, or become a mere academic exercise, there is a need for the applicant to demonstrate this aspect. In his ruling, the trial court was of the view that there was no proof before the court to show that the process of alienating the property to the 2nd applicant and two others was at its final stage, further there was need to safeguard the substratum of the petition and thus ordered no further developments other than specifically on the land occupied by the school; which he intimated would be in the public interest.



16. It has not been demonstrated to us how the conservatory order meant to preserve the substratum of the petition would render this intended appeal nugatory.
17. The applicants having failed to demonstrate the 2nd limb necessary, this application must fail. The application is accordingly dismissed.
18. The costs of the application will abide by the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF JULY, 2025.

S. OLE KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

ALI-ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

