



Mavoko Muundani Residents Association & 5 others v East Africa Portland Cement Plc & 5 others (Civil Application E146 of 2025) [2025] KECA 1459 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KECA 1459 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E146 OF 2025
PO KIAGE, WK KORIR & GV ODUNGA, JJA
JULY 30, 2025**

BETWEEN

**MAVOKO MUUNDANI RESIDENTS ASSOCIATION 1ST APPLICANT
DAVID MUSAU 2ND APPLICANT
JAMES KIGERA 3RD APPLICANT
MICHAEL WAMBUA 4TH APPLICANT
DANIEL KIMWELI 5TH APPLICANT
BONIFACE MUTINDA 6TH APPLICANT**

AND

**EAST AFRICA PORTLAND CEMENT PLC 1ST RESPONDENT
GEORNER SYSTEMS LTD 2ND RESPONDENT
COUNTY GOVERNMENT OF MACHAKOS 3RD RESPONDENT
FRANCISCO NGEI MUTUA 4TH RESPONDENT
NICODEMUS MULEI MUEKE 5TH RESPONDENT
ANTONY MUTHAMA 6TH RESPONDENT**

(Being an application for injunction restraining the respondents from evicting the applicants from their homes located in the parcel of land known as L.R. 8784/144, L.R No 8784/145 and L.R. NO 8784/653 or demolishing the aforesaid homes or interfering with the applicants' stay therein from the ruling and orders of the Environment and Land Court at Machakos (N. A. Matheka, J) on 25th February 2025 in ELC E037 of 2024)



RULING

1. The applicants' notice of motion dated 12th March 2025 and brought primarily under rule 5[2][b] of the Court of Appeal Rules, seeks an injunction restraining the respondents from evicting the applicants from their homes located in the parcels of land known as L.R. 8784/144, L.R No 8784/145 and L.R. No 8784/653 or demolishing the aforesaid homes or interfering with the applicants' stay therein pending the hearing and determination of their intended appeal.
2. By a decision delivered on 25th February, 2025, the learned Judge of the Environment and Land Court at Machakos [N. A. Matheka, J] dismissed the applicants' application dated 22nd May 2024 in which the applicants' substantive prayers were:
 1. That pending the hearing and determination of this suit, an order of interim injunction do issue restraining the 1st Defendant/Respondent and their agents from engaging in demolitions, evictions, or any other actions that would deprive the occupants of occupation of the suit property or alter the current status of the suit property.
 2. That pending the hearing and determination of this suit, there be an unconditional stay of the regularization process commenced on the 17th October, 2023 and/or any conveyance of the suit property by the 1st Respondents and its agents.
 - a. That pending the hearing and determination of this suit, the Honourable Court be pleased to issue a mandatory injunction compelling the 1st Defendant to engage the Plaintiffs on a regularization model based on reasonable terms pursuant to the public participation exercise previously conducted or to be conducted thereafter.
3. In dismissing the application, the learned Judge expressed herself as hereunder:

“It is not disputed that the suit property is registered in the name of the 1st defendant. It is also not disputed that some public participation was carried out in order to sell to the local community parcels of the said land. It appears the process of regularizing the same is ongoing for some despite some members objecting to the price. From the foregoing, I find that the applicants have failed to established a prima facie case at this stage. I find this application is not merited and is dismissed.”
4. During the plenary hearing on 30th July 2025, learned counsel, Mr Loki, appeared for the applicant, learned counsel, Ms Hellen Tusiime, appeared for the 1st respondent while learned counsel, Mr Daniel Nzuba, appeared for the 4th, 5th and 6th respondents. There was no appearance for the other parties despite due service of the hearing notice.
5. It is trite law that, in an application of this nature, an applicant must satisfy the Court that the appeal or intended appeal, as the case may be, is arguable, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. Whereas the applicant need not satisfy the existence of a multiplicity of arguable grounds, both conditions must be satisfied. In considering whether the appeal is arguable, it is sufficient if a single bona fide arguable ground of appeal is raised. Although an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the Court and is not frivolous, it certainly ought to be bona fide. See Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR.



- 6. It is therefore important that the applicant sets out what the arguable ground is and explains, briefly, why that ground is arguable. To be bona fide the ground in question ought to be referenced to the decision sought to be appealed against. It should not just be plucked from the air. We deprecate the practice of parties merely mentioning that they have an arguable appeal and then referring the Court to those grounds without more.
- 7. In this case, the applicant in paragraph 12 of the supporting affidavit states that:
 - “That the appeal is arguable and has chances of success.”
- 8. When we inquired from Mr Loki where, in the supporting affidavit, the issue of arguable appeal was referred to, counsel referred us to grounds 5, 6 and 7 in the body of the Notice of Motion which state:
 - “1. That cognisant of the fact that an opaque process would lead to disenfranchisement, loss of money and property, the applicants filed the suit before the trial court and an application under certificate of urgency accompanying the plaint
 - 2. That currently, the respondents are dispossessing the members of the applicants their properties and allocating the said plots to third parties.
 - 3. That the process of regularisation was preceded by public participation but thereafter, the respondents acted contrary to the resolutions of the public participation.”
- 9. The decision which the applicants intend to appeal against arises from the dismissal of the application for injunction in the exercise of the court’s discretion. Like any other exercise of discretion, this Court can only interfere therewith where it is shown: that the Judge misdirected herself in law; or that the learned Judge misapprehended the facts; or that the learned Judge took account of considerations of which should not have been taken account of; or that the learned Judge failed to take account of considerations of which should have been taken account of; or that the decision, albeit a discretionary one, is plainly wrong. See *United India Insurance Co. Ltd v East African Underwriters [Kenya] Ltd [1985] E.A. 898*.
- 10. We have considered the application, the affidavits on record and the submissions made and, based on the material placed before us, save for the general contention that the intended appeal is arguable and has chances of success, we are unable to find any arguable ground that faults the learned Judge’s exercise of discretion.
- 11. Being of that persuasion, we need not interrogate whether the applicants have satisfied the second condition. In the premises, the application fails and is dismissed with costs to the 1st, 4th, 5th and 6th respondents.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JULY, 2025.

P. O. KIAGE

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

