



**Kiugu v Garrity & another (Civil Application E016 of 2025)
[2025] KECA 1373 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1373 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E016 OF 2025
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
JULY 18, 2025**

BETWEEN

ERASTUS MUTHUURI KIUGU APPLICANT

AND

WILLIAM BRUCE GARRITY 1ST RESPONDENT

JULIAH MUGURE KIRIGIA 2ND RESPONDENT

*(Being an application for stay of execution from the Judgment of
the Environment and Land Court of Kenya at Meru (C. K. Nzili,
J.) delivered on 1st November, 2023 in E.L.C. No. 61 of 2022)*

RULING

1. In the Motion on notice brought under rule 5 (2)(b) of the Court of Appeal Rules, Article 159(2) of the Constitution, section 3, 3A and 3B of the Appellate Jurisdiction Act and all other enabling provisions of law the applicant, Erastus Muthuuri Kiugu applies for stay of proceedings in ELC No. 61 of 2022 at the Chief Magistrate’s Court in Meru pending the hearing and determination of the application:

“...to prevent further legal harassment of the Applicant, who has been unjustly reinstated into the matter...”;

that there be a stay of proceedings in the said matter pending hearing and determination of an intended appeal; that there be a stay of execution of the judgment delivered on 1st November, 2023 by Mutungi, J. in Environment and Land Court (ELC) Appeal No. E014 of 2023 together with all consequential orders emanating therefrom pending the hearing and determination of an intended appeal; that there be a stay of execution of the order directing the applicant to pay costs as issued in the said judgment pending the hearing and determination of this application and of an intended appeal and that we grant any further orders as may be necessary to meet the ends of justice and prevent the applicant



from suffering extreme hardship, irreparable harm, and undue prejudice. The Motion is supported by grounds on its face and a supporting affidavit of the applicant where it is stated amongst other things that the applicant, who says that he is a law abiding senior citizen is facing an imminent and unjust deprivation of his constitutional right to liberty, contrary to Articles 28, 29 and 39 of the Constitution of Kenya due to what he calls an erroneous judgment that subjects him to civil jail for costs unjustly imposed upon him. He says that he lawfully sold his property L.R. Nyaki/Kithoka/6108 (the suit land) in an open market transaction, that he fully discharged his obligations, and ceased to have any interest in the property:

“Despite this, he has been unfairly and maliciously dragged into legal proceedings over a marital dispute that does not concern him.”

2. Further, that the trial court rightly struck out the suit against him after recognizing that he had no role in the dispute but that the ELC Appeal No. E014 of 2023 reinstated him into the suit and imposed costs against him thereby exposing him to an injustice; that the judgment delivered by Mutungi, J. is unjust and legally indefensible as it punishes the applicant for a lawful land transaction he concluded years ago; that the respondent has moved to execute the judgment and had served a Notice to Show Cause on the applicant placing him at serious risk of wrongful incarceration; that he is pursuing an appeal which has high chances of success. He has set out some of the issues to be taken in an appeal including: whether the High Court erred in reinstating him into proceedings after he had been discharged by the trial court; whether it was lawful to impose costs on an innocent party who had no legal or beneficial interest in the disputed matter; whether the court’s decision violates the principles of fairness and due process by subjecting the applicant to an undue and oppressive legal burden. He says further that he will suffer extreme prejudice, irreparable harm, and financial ruin including wrongful imprisonment for a matter in which he has no legal obligation or culpability unless a stay of execution order is made. He has attached various documents to the application including sale agreements, ruling in Meru CMCC ELC No. 61 of 2022, judgment in Meru ELC Appeal No. E014 of 2023, notice to show cause served on him and other documents and pleadings.
3. In a replying affidavit the 1st respondent William Bruce Garrity depones that he filed a suit at the subordinate court against the applicant and the 2nd respondent Julia Mugure Kirigia, claiming that he had been defrauded in the process of purchasing the suit land; that he filed an application for inhibition; that after serving pleadings the applicant applied for the suit against him to be struck out; the applicant’s application was allowed while the application for an order of inhibition was dismissed. He filed an appeal against the order dismissing his application which appeal was allowed by the court finding that striking out the applicant’s name from the suit was a drastic measure which may prevent him from proving alleged fraud in the sale of the suit land. He denies that the applicant’s rights are being violated in any way stating that his appeal was successful with costs which have since been taxed at Kshs.264,050 which costs have not been challenged. He is opposed to the prayer for stay of proceedings stating that no material has been placed before us to prevent the suit at the magistrate’s court from proceeding. He has attached various documents to the affidavit including bill of costs, decree (on appeal) and notice to show cause issued against the applicant.
4. Both parties filed written submissions and authorities which we have considered.
5. When the Motion came up for hearing before us on 1st April, 2025 Mr. Allan Mutuma, learned counsel appeared for the applicant, learned counsel Mr. Mwirigi Kaburu appeared for the 1st respondent while learned counsel Mr. A. G. Riungu appeared for the 2nd respondent.



6. Highlighting written submissions Mr. Mutuma stated that a single arguable point on appeal would suffice in an application for stay of execution pending appeal.
7. Mr. Kaburu submitted that stay of execution is not granted for costs; that the applicant can recover the costs if the intended appeal succeeds. He thought that the applicant was going around to ask us to stay proceedings in a magistrates' court, a jurisdiction which he said we lacked. He asked us to dismiss the application.
8. Mr. Riungu did not take any positions in the matter.
9. We have considered the motion, affidavits, submissions made and the authorities cited.
10. The principles that apply in an application of this nature are well known. For an applicant to succeed he must firstly demonstrate that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that it is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay - see *Stanley Kangethe Kinyanjui v. Tony Ketter & Others* [2013] eKLR where those principles are well discussed.
11. The applicant here says that his rights have been violated where a subordinate court found that he was not a necessary party in a suit and struck out his name but that the High Court reinstated or returned him to the suit. He intends to argue an appeal that the Judge erred in reaching that decision. He wants to argue on appeal that reinstating him to the suit at the magistrate's court has imposed an oppressive legal burden on him, amongst other grounds. Upon consideration we think that these are not idle grounds, they are arguable on appeal and as has been held in various pronouncements of this Court an arguable appeal is not one that will succeed, it is one that requires consideration and determination by the court – see *Damji Pragji Mandavia v. Sara Lee Household & Body Care (K) Ltd* Civil Application No. Nai 345 of 2004.
12. The applicant submits on the nugatory aspect that he is a senior citizen who the 1st respondent wants to put in jail; that if he is incarcerated he will be prejudiced in a way that cannot be reversed.
13. This Court was faced with such a question in the *Christopher Ndarathi Murungaru v. Kenya Anti-Corruption Commission & Another* [2006] KECA 341 (KLR) case with such a question. It was held:

“In cases which are purely civil, this Court hardly grants a stay of proceedings on the basis that even if the proceedings to be stayed went ahead and were determined, that would not render an appeal nugatory because if the appeal succeeded, the decision of the trial court would be nullified and an appropriate order for costs in respect of the abortive hearing can be made – see for example *Silverstein v. Chesoni*, [2002] KLR 867. But matters involving penal consequences must, of necessity, be treated differently. It can be of no consolation to tell a man that his appeal will not be rendered nugatory even if he went to prison for only one week. The appeal would have been rendered nugatory.”
14. The applicant should not be incarcerated before his appeal is heard and determined and the application has merit.
15. The applicant has satisfied the principles that apply in an application like this one. We allow the Motion dated 29th January, 2025. Costs of the Motion will be in the intended appeal.

DATED AND DELIVERED AT NYERI THIS 18TH 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

