



Karanja v Kiragu (Suing on behalf of Jonathan Njuguna Wanjiru, David Chege and Mercy Emily Wanjiru - As Donors) (Civil Appeal (Application) E204 of 2022) [2025] KECA 1198 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KECA 1198 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E204 OF 2022
LA ACHODE, WK KORIR & JM NGUGI, JJA
JULY 4, 2025

BETWEEN

STEPHEN CHIIRA KARANJA APPLICANT

AND

JOHN THUO KIRAGU (SUING ON BEHALF OF JONATHAN NJUGUNA WANJIRU, DAVID CHEGE AND MERCY EMILY WANJIRU - AS DONORS) RESPONDENT

(Being an appeal against the Judgment and Decree of the Environment and Land Court at Nairobi (Komingoi J) dated 28 October, 2021 in ELC No. 588 of 2014)

RULING

1. Stephen Chiira Karanja, the applicant, filed a Notice of Motion dated 11th December 2024 under rule 1(2), and 5 (2)(b) of the Court of Appeal Rules 2022, and Article 159 (2) (d) of *the Constitution*, seeking for orders:
 - i. Spent
 - ii. That pending the inter partes hearing, an injunction does issue restraining the respondents by themselves, their servants or agents from sub-dividing the suit property land parcel No. LIMURU/KAMIRITHU/380, distributing the same to themselves, or disposing of it, or evicting the appellants from the said land parcel.
 - iii. That pending the hearing and determination of the instant appeal, an injunction does issue restraining the respondent by themselves, their servants or agents from dividing the suit property land parcel LIMURU/KARIMITHU/380, distributing the same to themselves or disposing of the same or evicting the Appellants from the said parcel of land.



- iv. That costs of this Application be in the cause.
2. The application is based on the grounds set out on its face, and the depositions in the supporting affidavit of even date, sworn by the applicant, deposing that the appeal arose from a judgement delivered on 28th October 2021, by Komingoi J in NAI ELC NO. 588 OF 2014. Aggrieved by the judgement, he filed an appeal on 8th May 2022 challenging the decision.
 3. The applicant states that he became apprehensive that the respondents were in the process of subdividing and distributing land parcel L.R. No. LIMURU/KARIMITHU/380 (suit land), among themselves. He conducted a search and established that the parcel of land was closed and was under the process of sub-division into new numbers being 6168 - 6202.
 4. The applicant avers that there is grave danger of the said property being disposed of to third parties if the order of injunction does not issue against the respondents, restraining them from dividing and distributing the said parcel of land and thereafter, evicting the applicant as other occupants claim interest. It is further deposed that the applicant's rights are likely to be prejudiced and the appeal rendered nugatory should it succeed. That on the other hand, the respondents will not suffer any prejudice if the orders sought are granted.
 5. In a Replying Affidavit sworn by the 1st respondent on 23rd December, 2024, on his own behalf and on behalf of David Chege and Mercy Emily Wanjiru, he deposes that the application is misconceived, bad in law, untenable and an abuse of the court process. That the application has been overtaken by events, as the subdivision exercise over the suit land was concluded one year ago. The old register was closed, and new titles to the subdivision being LIMURU/KAMIRITHU/6170, and 6172 among others, issued.
 6. In addition, the respondent deposes that a permanent injunction was issued in ELC CASE NO. 588 OF 2014, the subject of this appeal, restraining the appellant/applicant from interfering with the suit property. Further, that it is now 3 years since the applicant filed the appeal and he has not taken any steps to prosecute it and the appeal should be dismissed with costs.
 7. The applicant filed written submissions dated 30th December 2024 through the firm of Maina Makome & Company Advocate and restated the depositions in the supporting affidavit, which we need not reproduce here. He submits that he filed this application seeking an order of injunction upon establishing that the respondents were in the process of subdividing the suit land.
 8. The applicant submits that the grounds on which the Court will grant an order under rule 5 (2) (b) are well settled namely, that the appeal is arguable, and that unless the orders are granted the appeal will be rendered nugatory if it succeeds.
 9. The applicant urges that he intends to challenge on appeal, the learned Judge's failure to be bound by the decision of the High court in Salome Kiambati and others vs Doris Wanjiru & 3 Others, HCC N. 2797 of 1995. The court had found that the defendant in the said suit, on whose behalf the suit in the superior court was filed, held the suit land on behalf of three persons one of which is the Estate of Stephen Karanja Kiambati. Therefore, the learned Judge ought to have held that the respondent and those under whom he claims, hold the suit land in trust for the Estate of Stephen Karanja Kiambati to the extent of one third.
 10. Regarding whether the appeal will be rendered nugatory, if the application is not allowed, the applicant posits that the respondents are in the process of sub-dividing the suit land, according to the report he obtained from the land registry, following an official search. That if the respondents are not restrained, the instant appeal will be rendered nugatory. He urged that the application be allowed as prayed.



11. The respondents filed submissions dated 13th January 2025 through the firm of N. N. Njoroge & Company Advocates. They state that there is in existence a preliminary objection dated 14th June, 2022, seeking the dismissal of the Applicant’s appeal which was filed out of time and without leave of Court. They urge that the preliminary objection ought to be heard on priority basis as it is capable of disposing the appeal.
12. The respondent has crafted two issues for determination by the Court. The first issue is whether this application has been overtaken by events. The respondent contend that the process of subdivision which the applicant seeks to injunct , has already been undertaken and new titles issued. To buttress this assertion, they have annexed two copies of title deeds for some of the resultant subdivisions being LIMURU/KAMIRITHU/6170 and 6172 and assert that the process of subdivision has been concluded and issuing the injunctive orders sought by the applicant will be in vain.
13. The second issue is whether the application satisfies the threshold for grant of the orders sought. The respondent argues that the applicant has not demonstrated how the appeal will be rendered nugatory, since even if, indeed, the ongoing subdivision is likely to render the appeal nugatory, the applicant’s fears have come to pass and it is too late for him to get the relief sought.
14. The respondent relies on the case of Ali Abdallah Duhmy and 3 Others vs Mohamed Abdisheikh & 5 Others [2016] eKLR, where the Court observed that by definition, the term “nugatory” means more than just worthless but may also mean “futile” or “invalid”. That it should have been shown by the applicant that the appeal or intended appeal shall be rendered futile, invalid or a mere academic exercise, if the application is denied.
15. The respondent urges that the application has not met the threshold for granting of the orders sought and should be dismissed with costs.
16. The principles that apply in an application under rule 5(2) (b) for granting a stay of execution, or for injunctive relief pending appeal have long been settled. To be successful an applicant must first show that the intended appeal is arguable, and not merely one that is frivolous. Secondly, that the intended appeal, if successful, would be rendered nugatory if execution of the impugned judgment is not stayed.
17. In *Eric Makokha & 4 Others v Lawrence Sagini & 2 Others* [1994] eKLR this Court stated that:
 - “ An application for injunction under Rule 5 (2)
 - (b) is an invocation of the equitable jurisdiction of the Court. So, its grant must be made on principles established by equity...”
18. In *Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR, this Court described an arguable appeal in the following terms:
 - “ vii). An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous.
 - viii). In considering an application brought under Rule 5 (2) (b) the court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal.”
19. In determining whether the applicant herein has established the existence of an arguable appeal, we also bear in mind the observation of this Court in *Transouth Conveyors Limited v Kenya Revenue Authority & Another* [2007] eKLR, that a single point will suffice and an applicant need not establish a



multiplicity of arguable points. Neither is the applicant required to show that the ground will succeed. It only needs to be a ground that raises a serious question of law worthy of consideration by the Court, or one in respect of which a reasonable argument can be put forward in support.

20. The applicant’s argument is that a third of the suit land was held in trust for the Estate of Stephen Karanja Kiambati, which the learned Judge failed to acknowledge. In our view, allegations of misapplication of precedent and misapprehension of a trust relationship over land are not a frivolous contentions. They are serious legal grounds that merit appellate scrutiny.
21. Determining whether an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible, or if it is not reversible, whether damages will reasonably compensate the aggrieved party. In the decision of *Ngetich v Goren & another* (Civil Application No. E021 of 2024) [2025] KECA 565 (KLR) the Court stated that:

“On the nugatory aspect, we are alive to the fact that each case must depend on its own facts and peculiar circumstances. Furthermore, whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.”

22. The applicant states that the respondent is in the process of sub- dividing and distributing the suit land which may lead to his eviction, yet the main legal issue has not been addressed. That failure to grant the order sought will expose him to great risk and hardship. In our considered view, this would render the intended appeal futile, worthless and trifling.
23. In the premise, we find that the application dated 11th December 2024 is merited and is hereby allowed with orders that:
 - i. The status quo obtaining on the ground be maintained and no further alienation of the suit land shall be done.
 - ii. The costs of the application shall abide the outcome of the appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY, 2025

L. ACHODE

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JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

J. NGUGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed.



DEPUTY REGISTRAR

