



**Kioko (Suing as the Personal Representative of the Late Timothy Kioko Kyalo) v
Kimani (Suing as the Personal Representative of Joseph Kimani Njoroge) (Civil
Application E078 of 2025) [2025] KECA 1203 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1203 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E078 OF 2025
SG KAIRU, AO MUCHELULE & FA OCHIENG, JJA
JULY 4, 2025**

BETWEEN

**GEORGE M. TIMOTHY KIOKO (SUING AS THE PERSONAL
REPRESENTATIVE OF THE LATE TIMOTHY KIOKO KYALO) APPLICANT**

AND

**GEORGE NJOROGE KIMANI (SUING AS THE PERSONAL REPRESENTATIVE
OF JOSEPH KIMANI NJOROGE) RESPONDENT**

*(Being an application for stay of execution of the decree and orders of the Environment
and Land Court at Nairobi (J. Omange, J.) delivered on 5th December, 2024
pending hearing and determination of the appeal in ELC Case No. 952 of 2013)*

RULING

1. Before us is an application dated 13th February 2025, pursuant to which the applicant was requesting orders for the stay of execution of the judgment dated 5th December 2025.
2. The applicant was the plaintiff in the suit, in which the respondent lodged a counterclaim.
3. By the impugned judgment, the learned trial judge dismissed the suit, and then proceeded to enter judgment in favour of the respondent, in the terms set out in the counterclaim.
4. The applicant had instituted the proceedings in his capacity as the personal representative of the Late Timothy Kimotho Kyalo, who was the registered owner of the suit property L.R. No. Ruiru East Block 1 (Githunguri) 1584.
5. Timothy is said to have purchased the suit property from the Githunguri Ranching Company Limited in the year 1992.



6. On the other hand, the respondent, Joseph Kimani Njoroge is the son of Mary Wambui Kahiu, who is said to have purchased the suit property from the Githunguri Ranching Company in 1993.
7. Each of the parties claimed ownership of the suit property.
8. On account of the fact that each of the feuding parties held title documents for the suit property, the learned trial judge set out to determine who was the legitimate owner of the said property. It was her clear understanding that each of the parties was obliged to go beyond the title document and adduce evidence to prove how the said title was acquired.
9. After analyzing the evidence on record, the learned trial judge noted that the chairman of the Githunguri Ranching Company testified that the documents produced by the applicant did not emanate from the company.
10. The court also found that the applicant's documents contained discrepancies relating to the size of land on the title, as contrasted with the actual size on the ground.
11. A further discrepancy was with regard to the identification document, which the applicant's late father had used to have himself registered as the proprietor of the suit land. The identification number matched that which belonged to the respondent's mother.
12. Finally, the learned trial judge found that the respondent had been in occupation since 1985.
13. In those circumstances, the trial court declared that the respondent was the lawful owner of the suit land. The court dismissed the plaint and declared that the suit property should devolve to the estate of Mary Wambui Kahiu and her heirs. The learned trial judge further ordered the Land Registrar, Ruiru, to replace the lost register, which bore the information that Mary Wambui Kahiu was the lawful owner of the suit property.
14. The applicant was dissatisfied with the whole judgment and has commenced the process of appeal. He hopes to convince this Court to set aside the judgment, and to substitute the same with a finding that the plaintiff was the lawful proprietor of the suit property.
15. It is for that reason that the applicant has asked the court to stay execution of the judgment until the appeal is heard and determined. In his considered opinion, he has an arguable appeal.
16. Secondly, he submitted that unless execution of the judgment was stayed, the respondent would proceed to execute the impugned judgment, which would render the appeal nugatory.
17. In answer to the application, the respondent pointed out that the suit property had always been in the hands of his late mother since 1985.
18. Mr. Mugu, learned advocate for the applicant urged the court to be persuaded by his written submissions. The learned advocate had challenges with the virtual platform, on the date when the application came up for hearing. In the result, the applicant was not able to either highlight his written submissions, or answer questions from the court.
19. Mr. Kanyi, the learned advocate for the respondent, thereafter, made a choice to also rely solely on his written submissions.
20. We have given due consideration to the application, the affidavits by both parties, and the written submissions as well.



- 21. In Trust Bank Limited and Another vs. Investech Bank Limited and 3 Others, Civil Application Nai. 258 of 1999 (unreported) this Court held that:

“The jurisdiction of the Court under Rule 5(2) (b) is original and discretionary and it is trite law that to succeed an applicant has to show firstly that his appeal or intended appeal is arguable, to put another way, it is not frivolous and secondly that unless he is granted a stay the appeal or intended appeal, if successful will be rendered nugatory. These are the guiding principles but these principles must be considered against facts and circumstances of each case -----” Emphasis ours.
- 22. It is well settled that when a suit is dismissed, nothing ordinarily emanates from such dismissal that can be executed. It therefore follows that execution cannot flow from the dismissal of the applicant’s suit.
- 23. However, in this instance, there was also a judgment in favour of the respondent on the counter-claim.
- 24. Nonetheless, it is evident that the respondent has been on the suit property since 1985. In effect, the respondent need not execute the judgment in order to obtain possession of the suit land. The occupation of the suit property is not attributable to the judgment herein, as the same pre-dated the judgment by almost four decades.
- 25. In a similar vein, the title document, which is in the name of the respondent, was not due to the impugned judgment. This case is thus distinguishable from a case in which a respondent only acquires title or the document of title, following the cancellation of the applicant’s title. The respondent does not need to execute the judgment, so as to alter the applicant’s position, to the detriment of the latter.
- 26. The failure to order that execution be stayed would not occasion any prejudice to the applicant and nugatory test has therefore not been met.
- 27. In the result, we find no merit in the application dated 13th February, 2025. It is therefore dismissed, and the applicant shall pay the costs thereof to the respondent.

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

S. GATEMBU KAIRU, FCIArb.

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JUDGE OF APPEAL
F. OCHIENG

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JUDGE OF APPEAL
A. O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed
DEPUTY REGISTRAR

