



REPUBLIC OF KENYA



**Mucunu v Kariuki (Civil Application E39 of 2020)
[2024] KECA 170 (KLR) (23 February 2024) (Ruling)**

Neutral citation: [2024] KECA 170 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E39 OF 2020
MA WARSAME, S OLE KANTAI & P NYAMWEYA, JJA
FEBRUARY 23, 2024**

BETWEEN

ESTHER NYAWIRA MUCUNU APPLICANT

AND

JOHN MWANGI KARIUKI RESPONDENT

(An application for stay of execution and further proceedings pending hearing and determination of an appeal the Ruling (Mutungi, J.) delivered on 7th July, 2020 in ELC Case No. 1364 of 2014)

RULING

1. The applicant Esther Nyawira Mucunu by Motion brought under Order 3 Rule 9A *Civil Procedure Rules 2010* (this has no application in this Court) and Rules 5(2) (b) and 42 of the Court of Appeal Rules 2022 applied in the main that we issue an injunction restraining the respondent John Mwangi Kimani from evicting her from Plot No. 3/121 (L.R. No. Nairobi/Block 178/1027

“... as a result of the Ruling of the Environment and Land Court dated 12th day of October, 2023 as a result thereof or taking possession, alienating, disposing of or in any way selling the said property...”

ending the hearing and determination of the application and an intended appeal. In grounds in support of the Motion and in a supporting affidavit of the applicant it is said amongst other things that the Environment and Land Court (ELC) dismissed the applicant’s case in a Judgment delivered on 17th July, 2020 and that the applicant filed a notice of appeal against the said Judgment; that an application for the Motion to be certified as urgent had been declined by this Court; that the applicant was under pressure to vacate the land; that the applicant had filed an application in ELC which court ordered the applicant to vacate the land within 90 days of the ruling or face eviction; that the applicant stands to suffer substantial loss if the application is not heard urgently.



2. We have seen a Notice of Appeal lodged 17th July, 2020 at ELC which appeals against the Judgment of Mutungi, J. delivered on 7th July, 2020. There is no Notice of Appeal against the ruling dated 12th October, 2023 and we have not seen a draft Memorandum of Appeal.
3. When the Motion came up for hearing before us on a virtual platform on 29th January, 2024 learned counsel Mr. T.T. Aswani appeared for the applicant and relied fully on written submissions dated 25th January, 2024. The applicant gives a history of how the suit was dismissed and how she was ordered to vacate the suit land in the ruling dated 12th October, 2023; that the Motion before us is to challenge that ruling; that the applicant suffers the risk of being evicted from the suit land; that the appeal is arguable and not frivolous.
4. The respondent filed “Grounds of Opposition” which we note have no place in the rules of this Court.
5. For an applicant to succeed in an application of this nature he/she must, firstly, demonstrate that the appeal, or intended appeal, as the case may be is arguable, which is the same as saying that the same is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay – *Multimedia University & Another v Professor Gitile Naituli [2014] eKLR*.
6. We note that rule 5 (2) (b) of the rules of this Court donate jurisdiction to issue an injunction in appropriate cases.
7. As we have already stated the applicant lodged a notice of appeal to challenge the Judgment delivered on 17th July, 2020. The application before us is challenging a ruling delivered on 12th October, 2023 but there is no notice of appeal against that ruling.
8. The applicant has not attached a draft Memorandum of Appeal and there is nothing stated in the grounds in support of the Motion or the supporting affidavit to show what it is intended to be argued on appeal. There is no ground raised to show why we should give the applicant an injunction. The mere fact that ELC has ordered eviction of the applicant from the suit land cannot suffice to issue an injunction. The applicant having failed to demonstrate what is arguable on appeal or why we should give an injunction the Motion fails and is hereby dismissed. We make no order on costs the respondent not having filed a replying affidavit.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2024.

M. WARSAME

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

