



**Jiwani v Mohamed & 3 others (Civil Application 441 of 2024)  
[2024] KECA 1662 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1662 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION 441 OF 2024  
DK MUSINGA, J MOHAMMED & GV ODUNGA, JJA  
NOVEMBER 22, 2024**

**BETWEEN**

**ZAHERALI KARIM KURJI JIWANI ..... APPLICANT**

**AND**

**AMIRA SALIM MOHAMED ..... 1<sup>ST</sup> RESPONDENT**

**SAMILA SALIM MOHAMMED ..... 2<sup>ND</sup> RESPONDENT**

**THE REGISTRAR OF TITLES ..... 3<sup>RD</sup> RESPONDENT**

**ABDULKADIR ALI IBRAHIM ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for injunction pending an appeal from the judgment of the Environment and Land Court at Nairobi (Omollo, J.) delivered on 18th April 2024 in ELC No. 500 of 2016)*

**RULING**

1. The applicant's notice of motion dated 12<sup>th</sup> August 2024 and brought primarily under rule 5(2) (b) of the *Court of Appeal Rules*, seeks an injunction to restrain the respondents, their employees, servants and/or agents or assigns from evicting the applicant, and/or unlawfully entering and/or encroaching into, trespassing, alienating or otherwise interfering with the applicant's peaceful, actual and exclusive possession of a property known as LR No 1870/V/174 (the suit property), located at Mang'u Gardens off Church Road, Westlands, Court No 18 within Nairobi County, pending hearing and determination of an intended appeal. The applicant also seeks stay of execution of the judgment of Omollo, J. delivered on 18<sup>th</sup> April 2024 in Environment and Land Court (ELC) Case No 500 of 2016, and further proceedings in Misc. Application No E1281 of 2024, Abdikadir Ali Ibrahim v Zaherali Karim Kurji & 2 others.
2. In support of the application, the applicant states in his affidavit that on 18<sup>th</sup> April 2024, the trial court (Omollo, J.) issued a judgment in ELC No 500 of 2016 dismissing the suit that he had filed against



- the respondents in respect of the suit property. In that suit, the applicant had sought a declaration that as the sole surviving spouse of the late Nunu Saud Salim alias Nunu Zaherali Kurji Jiwani (deceased), who was the registered proprietor of the suit property, he has a legal interest in the suit property; that the transfer and/or any dealing relating to the suit property made on or before 22<sup>nd</sup> November 2015 is null and void; permanent injunction to restrain the 1<sup>st</sup>, 2<sup>nd</sup> and the 4<sup>th</sup> respondents from evicting him from the suit property; and an order to direct the 3<sup>rd</sup> respondent to rectify the Lands records by cancelling any transfer and/or any dealing related to the suit property.
3. The applicant stated that he got married to the deceased in 1982 and together they purchased the suit property, but it was registered in the name of the deceased; that they lived together in the suit property for over 30 years, and when the deceased passed on, he continued to live there; that the 1<sup>st</sup> and 2<sup>nd</sup> respondents fraudulently caused the deceased to transfer the suit property to their names, and that they subsequently sold and transferred it to the 4<sup>th</sup> respondent on 2<sup>nd</sup> March 2016.
  4. In the impugned judgment, the learned judge held that the suit property was originally registered under the name of the deceased, who is the mother of the 1<sup>st</sup> and 2<sup>nd</sup> respondents; that the applicant married the deceased on 1<sup>st</sup> May 1992; that the applicant failed to adduce sufficient evidence that the 1<sup>st</sup> and 2<sup>nd</sup> respondents fraudulently caused the deceased to transfer the suit property to them; and in the circumstances, the applicant's suit had no merit.
  5. Being aggrieved by that decision, the applicant filed a notice of appeal dated 30<sup>th</sup> July 2024 on which he bases this application.
  6. The applicant contends that his intended appeal is arguable on grounds, inter alia; that the learned judge erred in law and fact by failing to consider that spousal consent was mandatory before a transfer of the suit property, (which he terms matrimonial property) could be effected; and in failing to evaluate the evidence he had adduced in proof of his case, which was undefended by all the parties.
  7. On the nugatory aspect, the applicant states that the 4<sup>th</sup> respondent has commenced eviction proceedings against him, and unless the orders sought are granted, he will be evicted from the matrimonial property before the intended appeal is heard and determined.
  8. When this application came up for hearing on 18<sup>th</sup> November 2024, only Mr. Hasham, learned counsel for the applicant attended Court virtually. The respondents had been served with today's hearing notice, but they neither appeared nor filed any replying affidavit or submissions in response to the application.
  9. We have considered the application and the affidavit in support thereof. It is trite law that in an application of this nature an applicant must satisfy the Court that the appeal or intended appeal is arguable, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others* [2013] eKLR. An applicant need not prove a multiplicity of arguable grounds, even one will suffice.
  10. Having perused the impugned judgment and considered the proposed grounds of appeal as highlighted in the applicant's affidavit in support of his application, we are satisfied that the intended appeal is arguable. We need not say more at this juncture so that we do not embarrass the bench that will hear the appeal.
  11. On the nugatory aspect, we are satisfied that unless the orders sought are granted, the applicant may be evicted from the suit property before the intended appeal is heard and determined, in which event it shall be rendered nugatory if it were to succeed.



12. Consequently, we allow this application and grant the orders as sought. Considering that the respondents did not appear or file anything in opposition to the application, we make no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER 2024.**

**D. K. MUSINGA, (P.)**

..... **JUDGE OF APPEAL**

**JAMILA MOHAMMED**

..... **JUDGE OF APPEAL**

**G. V. ODUNGA**

..... **JUDGE OF APPEAL**

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

**SIGNED**

Deputy Registrar.

