



REPUBLIC OF KENYA



**Kagunda & another v Kagunda & another (Civil Application
E022 of 2024) [2024] KECA 1869 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1869 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E022 OF 2024
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
DECEMBER 19, 2024**

BETWEEN

ELIUD MAINA KAGUNDA 1ST APPLICANT

STANLEY KAGUNDA NJOGO 2ND APPLICANT

AND

PRISCILA NYAKIEGA KAGUNDA 1ST RESPONDENT

LAND REGISTRAR MURANGA 2ND RESPONDENT

*(Being an application to list the appeal for hearing expeditiously and/or
on a priority basis from the Ruling of the High Court at Meru (Muriithi,
J.) delivered on 30th May, 2023 in HC Succ. Case No. 383 of 2003)*

RULING

1. Before the court is the applicant's notice of motion dated 30th October 2024 made under rules 3A and 3B of the [Appellate Jurisdiction Act](#), seeking an order directing the appeal to be listed for hearing and determination on a priority basis or in the alternative, an order directing that the notice of preliminary objection dated 29th October 2024 be listed for hearing and determination expeditiously and on a priority basis as the 9th respondent is ailing and bedridden.
2. The application is supported by the grounds on the face of it, and the applicant's affidavit sworn on 30th October 2024 in support of the application where deposes inter alia that; he is 72 years old, ailing, and receiving treatment for, among others, acute left ganglia and hematoma causing him to be bedridden, now at home and undergoing physiotherapy; he only has one asset L.R No. Ntima/Igoki/11647, which he urgently needs to utilize commercially to generate income to cater for his expensive medication, related care, and daily subsistence; the appellant's eviction as ordered by the High Court was stayed by the Court of Appeal on 27th November 2023, and he is enjoying the status



quo exclusively, which is highly prejudicial to him given his poor health; and that the appellant will not suffer any prejudice should the application be allowed.

3. The respondents have not filed a response to the application.
4. The applicant's learned counsel has filed submissions and a list of authorities dated 13th December 2024. Learned counsel for the applicant submits primarily on whether the notice of preliminary objection dated 29th October 2024 is merited, which we need not get into for now as the preliminary objection is not before us now.
5. The 7th, 8th and 9th respondents have filed submissions dated 13th December 2024 and a list of authorities dated 29th October 2024. Learned counsel for the said respondents seeks to solely urge the court on the preliminary objection, which for reasons enumerated above, we need not go into now.
6. We have carefully considered the application, the supporting affidavit, and the submissions of the rival parties. We discern the singular issue for consideration to be whether or not to fast-track the pending appeal by issuing a date on a priority basis.
7. During the application hearing, the counsel for the 1st respondent informed the court that his client had since passed away and had not yet been substituted.
8. As structured, the bench is not seized of the court's diary. The registry, headed by the deputy registrar, is charged with fixing dates. The deputy registrar can fast-track a matter where there is sufficient reason to do so simply through a letter.

Concomitantly, the preliminary objection pending would have to be argued before the bench hearing the appeal.

9. In the end, for the reasons stated the application is misplaced and therefore dismissed with no orders as to costs.

DATED AND DELIVERED AT MERU THIS 19TH DAY OF DECEMBER, 2024.

J. LESIIT

.....

JUDGE OF APPEAL

ALI-ARONI

.....

JUDGE OF APPEAL

G. V. ODUNGA

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

