



**Monirei & another (Suing on behalf of the Estate of Lekiremu Ole Monirei) v Waiyaki & 2 others
(Civil Appeal (Application) E007 of 2024) [2024] KECA 1777 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1777 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E007 OF 2024
P NYAMWEYA, SG KAIRU & S OLE KANTAI, JJA
DECEMBER 6, 2024**

BETWEEN

**WILLIAM MONIREI 1ST APPLICANT
DAVID MONIREI 2ND APPLICANT
SUING ON BEHALF OF THE ESTATE OF LEKIREMU OLE MONIREI**

AND

**DR MUNYUA WAIYAKI 1ST RESPONDENT
LAND REGISTRAR, KAJIADO 2ND RESPONDENT
THE ATTORNEY GENERAL 3RD RESPONDENT**

*(Being an application for injunction pending the hearing and determination
of the appeal from the Judgment of the Environment and Land Court
of Kenya at Kajiado (M.N. Gicheru, J.) dated 3rd October 2023 in)*

RULING

1. In a judgment delivered on 3rd October 2023, the Environment and Land Court (ELC) at Kajiado (M.N. Gicheru, J) dismissed the applicants' suit against the respondents in which they had sought, among other reliefs: an order for revocation and cancellation of the title in favour of the 1st respondent in respect of the property known as Title Number Kajiado/Olchoro-Onyore/1327 (the property); and a declaration that they are the legal owners of that property.
2. The applicants' case before the ELC was that their late father, Lekiremu ole Monirei, who died in 1996, owned the property and never sold it to the 1st respondent or anyone else, and that the same was fraudulently transferred to the 1st respondent.



3. Aggrieved by the judgment, the applicants filed a Notice of Appeal dated 3rd October 2023 and have subsequently filed the Memorandum and Record of Appeal in the present appeal. The applicants are now before us with their Notice of Motion dated 27th June 2024 seeking an order of injunction against the respondents to restrain them from selling, transferring or disposing of the property pending the hearing and determination of the appeal.
4. We heard learned counsel on the application on 20th August 2024. Mr. A.S. Masika appeared for the applicants. Mr. George Ouma appeared for the 1st respondent, while Mr. Motari appeared for the 2nd and 3rd respondents. Counsel orally highlighted their respective written submissions.
5. To succeed in their application, the applicants are required to demonstrate that the appeal is arguable and that should we decline to grant the orders sought, and the appeal eventually succeeds, the appeal will be rendered nugatory. See for instance *Isbmael Kagunyi Thande v Housing Finance of Kenya Limited* [2007] eKLR; *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others* [2013] eKLR.
6. Counsel for the applicants has urged that the applicants have presented an arguable appeal as discernible from their Memorandum of Appeal; that for instance, the trial court erred in finding that there was an agreement for sale when the parties had no agreement. On the nugatory aspect, counsel submitted that the applicants are in possession of the property and are at risk of eviction and an award of damages would not compensate them.
7. Counsel for the respondents, on the other hand, urged that the application does not meet the required threshold, that the applicants acknowledged in their evidence before the trial court that the property was sold; that the only dispute is the acreage sold and whether the full payment was made; and that the ELC correctly found that the applicants did not establish their case before the trial court.
8. On the nugatory aspect, the respondents state that the property is registered in the name of the 1st respondent, that the applicants are not in occupation and there is therefore no threat of eviction; and that there is no evidence of any threatened sale of the property.
9. Having considered the application, the affidavits and the rival submissions against the applicable legal principles, we observe from the Memorandum of Appeal, that it is contended, for instance, that the ELC fell into error in finding there was a sale agreement between the late father of the applicants and the 1st respondent, and in failing to find that the registration of the 1st respondent as owner, was irregular. Bearing in mind that an arguable appeal is not one that will necessarily succeed, we are persuaded that the appeal is not frivolous. It is arguable.
10. On the nugatory aspect, the applicants assert that they grew up on the property and are in occupation and there is a threat of disposal of the property and of eviction, and should that happen, the damage will be irreversible and irreparable. The respondents on the other hand assert that the applicants are not in possession and there is no threat of disposal of the property. There is accordingly a contest as to the status of the property on the ground. In the circumstances, the order, that commends itself to us, which we hereby grant, is an order restraining the 1st respondent from disposing of the property known as Title Number Kajiado/Olchoro-Onyore/1327 pending the hearing and determination of this appeal.
11. The costs of the application shall abide by the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER, 2024.

S. GATEMBU KAIRU, FCIArb.

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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

