



**Njogu v Mwangi & 3 others (Civil Application E436 of 2021)
[2022] KECA 965 (KLR) (26 August 2022) (Ruling)**

Neutral citation: [2022] KECA 965 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E436 OF 2021
W KARANJA, HM OKWENGU & S OLE KANTAI, JJA
AUGUST 26, 2022**

BETWEEN

LUCY WANGARI NJOGU APPLICANT

AND

PETER LEONARD MWANGI 1ST RESPONDENT

CONSOLIDATED BANK OF KENYA LIMITED 2ND RESPONDENT

CYRUS GITARI KATHURI 3RD RESPONDENT

EQUITY BANK LIMITED 4TH RESPONDENT

(An application for injunction pending hearing and determination of an intended appeal from the Judgment of the Environment and Land Court of Kenya at Nairobi (Komingoi, J.) dated 14th October, 2021 in ELC Cause No. 358 of 2010)

RULING

1. Lucy Wangari Njogu (the applicant) has approached the Court under article 159 of the [Constitution of Kenya, 2010](#) and Rule 5(2) (b) of the [Court of Appeal Rules](#) and all enabling provisions of law praying in the main that pending the hearing and determination of the application and of an intended appeal we be pleased to issue interim orders restraining the 3rd respondent (Cyrus Gitari Kathuri) from interfering with her possession and occupation of the property known as L.R. No. 16217/34 (suit property) or transferring the same to any person. It is prayed in the alternative that we order a status quo in respect of occupation, possession and ownership of the said property. It is also prayed that we should order an injunction restraining the 3rd respondent from interfering with the applicant's possession and occupation of the said property pending hearing and determination of an intended appeal. The Motion is supported by grounds on its face and by the supporting affidavit of the applicant where it is said, *inter alia*, that the Environment and Land Court (Komingoi, J.) in a Judgment delivered on



14th October, 2021 had dismissed the applicant's suit and the suit property was threatened with sale or transfer. Further, that the Judge had failed to note that there was in place a Court order and that the sale of the suit property had been conducted in contempt of that order; that the sale and transfer of the suit property to the 3rd respondent had been conducted in a clandestine manner which the Judge failed to notice in the said Judgment; that the intended appeal has high chances of success. Further, that the applicant had for many years lived with her husband the 1st respondent (Peter Leonard Mwangi) as husband and wife; that she had in 1998 purchased that suit property on her own; her husband was at the material time employed as a Manager by Co-operative Bank of Kenya Limited and that she had approached her said husband to borrow a sum of money on her behalf from the said bank where he enjoyed friendly staff interest rates; the suit property was offered as security for the loan but as a condition precedent she had to transfer the said property to her husband for that to be done; she had repaid the loan but was surprised to discover that her husband had taken a further loan on the security of the suit property; her husband was charged with a criminal offence and lost his job in the process; he was subsequently employed by Consolidated Bank of Kenya Limited (the 2nd respondent) and the charge was discharged by Co-operative Bank of Kenya Limited and charged by the 2nd respondent. This long journey caused the applicant to fear and worry that the suit property may be jeopardized – she filed H.C.C.C. No. 3 of 2009 (OS) against her husband and obtained orders restraining him or his agents from dealing with the suit property and the court order was registered against the suit property on 26th May, 2009 but to her sorrow, the same was lifted by the Registrar of Titles without notice to her and the suit property was immediately transferred by the 2nd respondent to the 3rd respondent at what she considered an undervalue. She thought that this was all a conspiracy between the 1st, 2nd and 3rd respondents, a conspiracy made worse by the fact that the 3rd respondent is a brother in law of her husband, the 1st respondent, and he (the 3rd respondent) knew that the suit property belonged to her. She says at paragraph 39 of her affidavit:

That It is just and fit in the circumstances to grant the prayers sought in the application to enable me exercise my redemption right as soon as possible and at the same time that the right procedure to be followed in order that I can be awarded justice and my rights to property not to be violated as the Respondent intends to.”

2. The 3rd respondent had since filed an application in the ELC for her eviction and her eviction was imminent after her suit was dismissed by that Court.
3. Billy Obindi, the Recoveries Officer of the 2nd respondent in a replying affidavit depones that the 1st respondent was at all material times the registered owner of the suit property having purchased the same from the applicant; that upon application, the suit property had been charged by the 2nd respondent as a security for a loan; the loan remaining unpaid the 2nd respondent exercised its statutory power of sale and sold the suit property to the 3rd respondent who was financed by the 4th respondent (Equity Bank Limited). He denied knowing about the case in court (H.C.C.C. No. 3 of 2009) (OS) or the orders in that case and wondered why the case in ELC was filed over one year after the suit property was sold to the 3rd respondent. He thought upon advise of the bank's lawyers that the Motion before us is frivolous, vexatious, scandalous and an abuse of court process and flew in the face of the overriding principles under Section 3A of the [Appellate Jurisdiction Act](#) and that we have no jurisdiction to stay a negative order where the suit in ELC was dismissed. According to him there is no arguable appeal and the said respondent, a bank, can compensate the applicant if the appeal succeeds.
4. We have seen and considered the submissions and lists of authorities filed by the respondent's in opposing the Motion.



5. The principles that apply in an application of this nature are well known and were well summarized in the case of *Stanley Kangethe Kinyanjui v Tony Ketter & others* [2013] eKLR. For an applicant to succeed he must firstly demonstrate that the appeal, or intended appeal, as the case may be, is arguable, which is to say that it is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay. It is also true, as case law will show, that an applicant need not demonstrate a multiplicity of arguable points; a single arguable point will suffice – *Damji Pramji Mandaria v Sarah Lee Household and Body Care (K) Limited*, Civil Application No 345 of 2004 (ur).
6. We are reminded by the 2nd respondent that the suit in ELC was dismissed. The 2nd respondent thinks that such dismissal robs us of jurisdiction to entertain an application such as this one, but is that a true interpretation of the law? The applicant has approached this Court on various prayers one of which is for an injunction to restrain the 3rd respondent from dealing with or interfering with the suit property. We think that in the circumstances where the applicant prays for an injunction we have jurisdiction to entertain the application and to grant positive orders if we find the applicant deserving of the same.
7. The applicant says that she moved the High Court and obtained orders in H.C.C.C. No. 3 of 2009 (OS) protecting her rights over the suit property. That order, it is deponed, was registered against the title at the of Lands Registry but was lifted by the Registrar and the property then transferred to the 3rd respondent. The applicant says, and this has not been seriously challenged, that she was not given any notice when the court order was lifted and we think that there can be no challenge that the Registrar of Lands was required in law to serve a notice to the applicant who had filed the court order before the same was removed to enable transfer of the land to the 3rd respondent. The applicant suspects a conspiracy but let us leave that issue to be decided on appeal. We think it is an arguable point on appeal whether the Court order could be lifted by the Registrar without notice to the applicant who had registered the same and as we have shown a single arguable point on appeal will suffice to satisfy the requirement under rule 5 (2) (b) of the *Court of Appeal Rules*.
8. On the nugatory aspect the applicant says that she is threatened with eviction. Indeed the 3rd respondent moved the ELC for such an order which was determined in his favour with the dismissal of the suit. We think that the applicant may be evicted; the 3rd respondent may in any event transfer the suit property to others and make it be beyond the applicant’s reach.
9. For these reasons we are that the applicant is entitled to an order of injunction restraining the 3rd respondent (Cyrus Gitari Kathuri) from interfering with her possession and occupation of the suit property and accordingly allow the Motion dated December 3, 2021. I would order costs of the Motion to be in the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF AUGUST, 2022.

W. KARANJA

.....

JUDGE OF APPEAL

HANNAH OKWENGU

.....

JUDGE OF APPEAL

S. ole KANTAI

.....



JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

