



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chimumu & 1,183 others v Lalo & 227 others & 8 others (Civil Application  
E009 of 2022) [2022] KECA 1217 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1217 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E009 OF 2022  
SG KAIRU, P NYAMWEYA & JW LESSIT, JJA  
NOVEMBER 4, 2022**

**BETWEEN**

**NDEGWA NGUNDI CHIMUMU & 1,183 OTHERS ..... APPLICANT**

**AND**

**LALO LUGWE LALO & 227 OTHERS ..... 1<sup>ST</sup> RESPONDENT**

**FARIDA KARONEY, OGW ..... 2<sup>ND</sup> RESPONDENT**

**DICKSON SAFARI ..... 3<sup>RD</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL  
PLANNING ..... 4<sup>TH</sup> RESPONDENT**

**LAND REGISTRAR OF KWALE ..... 5<sup>TH</sup> RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 6<sup>TH</sup>  
RESPONDENT**

**ADJUDICATION AND SETTLEMENT OFFICER, KINANGO .... 7<sup>TH</sup>  
RESPONDENT**

**CHIEF LAND REGISTRAR ..... 8<sup>TH</sup> RESPONDENT**

**ETHICS & ANTI CORRUPTION COMMISSION ..... 9<sup>TH</sup> RESPONDENT**

*(An application for stay of execution of 2 the order and decree of  
the Environment and Land Court Petition No. 46 of 2019 filed at  
Mombasa and given on 21st July 2021 and issued on 23rd July 2021)*



## RULING

1. The applicants, Ndegwa Ngundi Chimumu and 1183 others who are not named, have in their application dated February 11, 2022 (the subject of this ruling) sought an order under Rule 5(2)(b) of the [Court of Appeal Rules](#) that pending the hearing and determination of their intended appeal, there be a stay of execution of the order and decree of the High Court given on July 21, 2021 and issued on July 23, 2021 in Constitutional Petition No 46 of 2019.
2. We have considered the application, the submissions written and oral, by learned counsel Mr. Asige for the applicants and Mr. Kinyua for the 1<sup>st</sup> respondent as well as the oral representations by Miss Waswa, learned counsel for the Attorney General and Miss Songole holding brief for Ms Abulrahim for the 9<sup>th</sup> respondent.
3. The background, in brief, is that in November 2019, the 1<sup>st</sup> respondent, comprising of 228 persons (the petitioners) claiming to be owners of various parcels of land within Maji ya Chumvi Adjudication Section in Kwale County, petitioned the Environment and Land Court at Mombasa complaining of, among other things, errors in dating of their titles issued upon conclusion of the adjudication process. In their petition, the 1<sup>st</sup> respondent/petitioners sought numerous reliefs against the 2<sup>nd</sup> to 9<sup>th</sup> respondents.
4. However, in July 2021 by a consent letter dated July 21, 2021 addressed to the Deputy Registrar of the ELC and executed by the advocates for the 1<sup>st</sup> respondent/petitioners on the one hand and by the Principal Litigation Counsel on behalf of the Attorney General for the 2<sup>nd</sup> to 9<sup>th</sup> respondents on the other hand, the petition was compromised on terms that all titles issued to the legitimate owners would be surrendered for correction by cancellation in exchange of titles bearing correct date of issue. The consent was duly adopted as an order of the court and an order was issued on July 23, 2021.
5. The applicants had in the meanwhile applied to be made parties to the petition before the ELC but it appears that their application for joinder had not been prosecuted or disposed of by the time the parties to the petition compromised it by the consent afore mentioned. The applicants then moved the ELC, by their application dated September 16, 2021, seeking an order for “the discharge, quashing and setting aside and/or vacation of the order given on July 21, 2021 and issued on July 23, 2021”. That application was heard before the ELC and was dismissed in a ruling delivered on January 19, 2022 in which the learned Judge of the ELC (NA Matheka, J.) held that the applicants, not being parties to the suit, had no locus standi to apply to set aside a validly entered consent by the parties to the suit and that the application was an abuse of the court process, and that their remedy, if any, “would be to file a fresh suit.”
6. Aggrieved, and intending to challenge that ruling, the applicants filed a notice of appeal dated January 20, 2022. It is on that notice of appeal on which the applicants have hinged their present application in a bid to stay the execution of the earlier consent orders.
7. Learned counsel for the 1<sup>st</sup> respondent Mr. Kinyua, has rightly in our view, raised a preliminary objection by his notice dated March 2, 2022, that a notice of appeal relating to the ruling delivered on January 19, 2022 cannot be the basis for seeking a stay of execution of earlier orders with respect to which no notice of appeal has been filed. See decision of this court in [Nguruman Limited v Shampole Group Ranch & another](#) [2014] eKLR. It is the notice of appeal that is the basis of the court’s jurisdiction under Rule 5(2)(b) of the Court of Appeal Rules. See [Equity Bank Limited v West](#)



Link Mbo Limited [2013] eKLR. We uphold the preliminary objection that the court is bereft of jurisdiction in the absence of a notice of appeal in respect of the orders sought to be stayed.

8. Even if we were to consider the application on its merits, and bearing in mind that an arguable appeal is not one that will necessarily succeed, [See Stanley Kangethe Kinyanjui v Tonny Keter and 5 others [2013] eKLR] it may well be arguable that a person who is not privy to a suit may nonetheless challenge consent orders in such action. But as to whether the appeal will be rendered nugatory if the orders sought are not granted, we are not persuaded that the applicants have demonstrated this to be the case here for it is not clear why the applicants must ride on the 1<sup>st</sup> respondent's action as opposed to commencing their own action as suggested by the learned Judge of the ELC.
9. All in all, the application fails and is dismissed with costs to the 1<sup>st</sup> respondent.

**DATED AND DELIVERED AT MOMBASA THIS 4<sup>TH</sup> DAY OF NOVEMBER 2022.**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

**J. LESIIT**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

