



REPUBLIC OF KENYA



KENYA LAW
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**Kamunya & 24 others v Patmwa Limited (Civil Application
E084 of 2021) [2021] KECA 163 (KLR) (19 November 2021) (Ruling)**

Neutral citation: [2021] KECA 163 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E084 OF 2021
HA OMONDI, DK MUSINGA & KI LAIBUTA, JJA
NOVEMBER 19, 2021**

BETWEEN

PHILIP KAMUNYA	1ST APPLICANT
IBRAHIM ONGIRI	2ND APPLICANT
NELSON IKHUTA	3RD APPLICANT
SAMSON SAGWE	4TH APPLICANT
JOSEPH KAMAU	5TH APPLICANT
ROBERT MAINA	6TH APPLICANT
ALICE GATHONI	7TH APPLICANT
SIMON PETER WERU	8TH APPLICANT
JAMES MAKORI	9TH APPLICANT
GEOFFREY MUIGAI	10TH APPLICANT
PIUS SEIF	11TH APPLICANT
RICHARD ATAMBO	12TH APPLICANT
JAMES MWANIKI	13TH APPLICANT
GEORGE ONSONGO	14TH APPLICANT
ALOYCE ONGOTO	15TH APPLICANT
JOYCE OBADIA	16TH APPLICANT
EUNICE NJOKI	17TH APPLICANT
MIRIAM ONYANGO	18TH APPLICANT
NATHAN NYAKUNDI	19TH APPLICANT



CATHERINE NDUKU 20TH APPLICANT
CHARLES GITHUI 21ST APPLICANT
CHARLES YEWA OLOO 22ND APPLICANT
DAVID MAINGI 23RD APPLICANT
EVANS MUNYASIA 24TH APPLICANT
ALEX ODHIAMBO 25TH APPLICANT

AND

PATMWA LIMITED RESPONDENT

(An application for stay of execution pending the lodging, hearing and determination of an intended appeal from the Ruling of the Environment and Land Court at Nairobi (E. Obaga, J.) delivered on 4th March 2021 in E.L.C. No. 56 of 2012)

RULING

1. The applicants' Notice of Motion dated 10th March 2021 seeks stay of the judgment and decree issued in Nairobi ELC No.56 of 2012 (O.S.) on 4th March 2021 pending hearing and determination of an intended appeal. The 25 applicants reside on a property known as L.R No. 9042/126 situate at Embakasi, Muradi area (the suit property), where they say that they have carried out permanent developments.
2. The applicants filed a suit against the respondent, the registered proprietor of the suit property, claiming that they had resided on the suit property for more than twenty (20) years, and urged the Environment and Land Court to declare them owners thereof under the doctrine of adverse possession.
3. The respondent opposed the suit but did not file any counterclaim seeking eviction of the applicants. However, the respondent filed an application for striking out of the applicants' suit and for their eviction, on grounds that the suit was *res judicata*. It argued that the applicants were members of Airport View Neighbours Group, which, through its officials, had unsuccessfully sued the respondent in ELC NO. 335 of 2010 seeking orders of adverse possession. Upon dismissal of the suit, the applicants, in their individual capacities, filed ELC No. 56 of 2012, which was struck out, and the trial court ordered their eviction from the suit property.
4. The applicants, having filed a notice of appeal against the impugned decision, now urge this Court to stay the orders of the trial court. They contend that their intended appeal is arguable and, unless the orders sought are granted, they shall be evicted from their respective homes, thus rendering the appeal, (if successful) nugatory.
5. The respondent, on the other hand, contends that the intended appeal is not arguable and that the appeal, if successful, shall not be rendered nugatory even if the applicants are evicted from their residences erected on the suit property.
6. Upon perusal of the application, the parties' affidavits and submissions, and bearing in mind the principles under which this Court determines rule 5(2)(b) applications as summarized in *Stanley Kangethe Kinyanjui v Tony Ketter & Others [2013] eKLR*, we are satisfied that the intended appeal is



arguable. We are also persuaded that unless we grant the orders sought, the applicants shall be evicted from the suit property before their intended appeal is heard and determined, in which event the appeal, if successful, shall be rendered nugatory.

7. Consequently, we hereby grant stay of execution of the judgment and decree issued in Nairobi ELC Case No. 56 of 2012 (O.S.) and in particular the eviction orders against the applicants pending hearing and determination of the intended appeal.

8. Each party shall bear its own costs of the application.

DATED AND DELIVERED AT MOMBASA THIS 19TH DAY OF NOVEMBER, 2021.

D. K. MUSINGA, (P)

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

