



**Tropical Treasure Limited v Mangi & 3 others (Civil Application
26 of 2021) [2021] KECA 319 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 319 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CIVIL APPLICATION 26 OF 2021
SG KAIRU, P NYAMWEYA & JW LESSIT, JJA
DECEMBER 17, 2021**

BETWEEN

TROPICAL TREASURE LIMITED APPLICANT

AND

CHARO MANYULE MANGI 1ST RESPONDENT

BAYA YAA MANGI 2ND RESPONDENT

P.M. OMWENGA 3RD RESPONDENT

THE LAND REGISTRAR, MOMBASA 4TH RESPONDENT

*(An application for stay of execution pending the lodging and determination
of an intended appeal from the judgment of the Environment & Land Court at
Malindi (Olola, J.) delivered on 24th October 2019 in ELC Case No. 26 of 2015)*

RULING

1. In its application dated 18th March 2021, the applicant Tropical Treasure Limited has sought an order of stay of execution of the judgment and decree of the Environment and Land Court given on 24th October 2019. By that judgment the Environment and Land Court (ELC) allowed the first and second respondents' suit and declared as null and void the transfer in favour of the applicant of property known as LR. No. 28534 Kilifi. The ELC ordered the rectification of the register to revert the ownership of the property to the 1st and 2nd respondents as the administrator of the estate of Manyale Mangi Yaa (Deceased).
2. In its judgment, the ELC found that even though the 1st and 2nd respondents, as administrators of the estate of the deceased, had contracted to sell the property to the applicant for the price of Kshs.41,500,000.00, the property was irregularly transferred to the applicant; that the 1st and 2nd



respondents were hoodwinked to prematurely sign the transfer in favor of the applicant; and that only Kshs.2,200,000 of the purchase price had been paid.

3. As correctly submitted by the advocates for the applicant through learned counsel Mr. Ogendo who appeared for Mogaka Omwenga & Mabeya Advocates, in an application of this nature, an applicant is required to demonstrate that the intended appeal is arguable and that if the orders sought are not granted, the intended appeal if successful will be rendered nugatory. See *Stanley Kangethe Kinyanjui vs. Tony Keter and 5 others* [2013] eKLR.
4. Ms. Mango learned counsel for the 1st and 2nd respondents on the other hand submitted that the requirements for the grant of interim orders under Rule 5(2)(b) of the *Court of Appeal Rules* have not been met.
5. The applicant urged that its intended appeal is arguable because among other errors, the ELC failed to hold that parties are bound by the terms of the sale agreement. Other complaints relating to the judgment are set out in the draft memorandum of appeal. We are satisfied that the intended appeal is not frivolous. It is indeed arguable.
6. As to whether the intended appeal will be rendered negatory if we decline to allow the application and the appeal ultimately succeeds, we have considered the contents of the affidavits on both sides. It has been demonstrated that the transfer in favour of the applicant has already been cancelled and the title reverted to the 1st and 2nd respondents as administrators of the estate of the deceased, even though one of those administrators, the 2nd respondent is also now deceased. We also note that the present application was filed considerably long after the judgment of the ELC was delivered.
7. Consequently, the application fails. It is accordingly dismissed with costs to the 1st and 2nd respondents. Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 17TH DAY OF DECEMBER 2021.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

