



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: W. KARANJA, MUSINGA & KIAGE, J.J.A.)

CIVIL APPLICATION NO. 117 OF 2020

BETWEEN

ROSE NYAGA NJAMBI.....1ST APPLICANT

JOASH OCHIENG.....2ND APPLICANT

JOHN KIMANI GITIYA.....3RD APPLICANT

GODFREY WERE.....4TH APPLICANT

AND

GALOT INDUSTRIES LIMITED.....RESPONDENT

(Being an application seeking stay of execution of the Judgment and

Decree of the Environment and Land Court of Kenya at Machakos

(A. O. Angote, J.) dated 24th April 2020 in *E.L.C Case No. 26 of 2014.*)

RULING OF THE COURT

1. By an application dated 14th May 2020, the applicants sought stay of execution of the judgment of *Angote, J.* in *Environment and Land Court (ELC) at Machakos No.26 of 2014*, where the Court ordered, *inter alia*, that the applicants be evicted from a parcel of land known as **L.R No. 12867/511** situate at Mavoko (the suit land), which is registered in the name of the respondent.
2. The suit land is a remainder of a bigger parcel of land that was compulsorily acquired for construction of the Kitengela interchange along the Namanga-Athi River Highway. The applicants were issued with allotment letters in respect of the suit land but the respondent, who was the original owner of the entire parcel of land that was compulsorily acquired by the government, successfully applied for allotment of the unutilised land; paid the allotment fees and all other outgoings and became the registered owner of the suit land.
3. The applicants faulted the learned judge for ordering their eviction, arguing that the respondent unlawfully acquired the suit land, having been fully compensated by the government. They urged this Court to stay the order of eviction, contending that their intended appeal is arguable; and that unless the order sought is granted, they would be evicted from the suit land, which event will render the appeal nugatory.
4. The respondent opposed the application. It contended that it lawfully re-acquired the suit land; that the applicants were in unlawful occupation thereof; that the purported allotment letters issued to the applicants could not override its lawfully acquired Grant.
5. Having considered the application; the submissions by all the parties; and bearing in mind the principles that guide this Court in its determination of **rule 5(2) (b)** applications as enunciated in *Stanley Kangethe v Tony Ketter & Others [2013] eKLR*, we are not satisfied that the applicants have met the twin conditions for grant of the orders sought.
6. *Prima facie*, the respondent is the registered proprietor of the suit land, whereas the applicants' sole claim to the same is premised on letters of allotment. It is therefore doubtful whether the applicants' intended appeal is arguable.

7. As the applicants have not demonstrated that they have an arguable appeal, we need not consider the nugatory aspect of the intended appeal since an order of stay cannot be granted unless the twin conditions are satisfied.

8. Consequently, this application is dismissed. Each party shall bear its own costs of the application.

Dated and delivered at Nairobi this 9th day of October, 2020.

W. KARANJA

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR