



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngumi v Kinyanjui & 2 others (Environment and Land Appeal  
E042 of 2024) [2025] KEELC 354 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 354 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E042 OF 2024  
BM EBOSO, J  
JANUARY 30, 2025**

**BETWEEN**

**DANIEL KIMANI NGUMI ..... APPLICANT**

**AND**

**ANNAH WANGARI KINYANJUI ..... 1<sup>ST</sup> RESPONDENT**

**JOHN KIMANI NGATU ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR, GATUNDU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Through the notice of motion dated 15/5/2024, Daniel Kimani Ngumi [ the applicant] invited this court to grant him the following orders, pending the hearing and disposal of this appeal:
  - a. Spent
  - b. Spent
  - c. That pending the hearing and determination of the filed appeal dated 23rd April 2024, this Honourable Court be pleased to grant the applicant stay of any dealings with 2.2 acres of land excised from land parcel no. Kiganjo/Kiamwangi/1070 pursuant to the decision of Hon. Senior Principal Magistrate W. Ngumi in Gatundu delivered in ELC Case No. E016 of 2021 on 28th March 2024.
  - d. That in the alternative, status quo be maintained with regard to any dealings with 2.2 acres of land excised from land parcel no. Kiganjo/Kiamwangi/1070 being land parcel no. Kiganjo/Kiamwangi/1070 till the hearing and determination of this application and the filed appeal.
  - e. That costs be provided in the cause.



2. Before I analyse and dispose the issues that fall for determination in the application, I will briefly outline the background to the application.
3. The appellant instituted Gatundu MCE & L Case No. E016 of 2021 against the respondent seeking:
  - (i) a declaration that the late Ngumi Njuguna was the rightful and legal owner of land parcel number Kiganjo/Kiamwangi/962;
  - (ii) an order compelling the Gatundu Land Registrar to rectify entries in the green card relating to the above title; and
  - (iii) an order awarding the appellant costs of the suit.
4. The appellant contended before the lower court that land parcel number Kiganjo/Kiamwangi/962 belonged to his late father, Ngumi Njuguna, adding that his late father had purchased the land from one Paul Wainaina Kahia who was a beneficiary of the estate of Kahia Ndururume.
5. The 1st and 2nd respondents contested the claim. Their case was that sale and registration of the land in the name of Ngumi Njuguna was fraudulent. They contended that Paul Wainaina Kahia had been tried and convicted by the Thika Chief Magistrate Court in relation to his registration as proprietor of the land vide a Judgment rendered in Thika CMC Criminal Case No. 3701 of 2002.
6. Ultimately, the trial court rendered a Judgment dated 28/4/2024, in which it found that the appellant had failed to prove his case. The trial court dismissed the appellant's case with costs. Aggrieved, the appellant brought this appeal which is now pending hearing and disposal.
7. Against the above background, the appellant seeks the above interlocutory orders. The application was anchored on the grounds outlined in the motion and in the appellant's affidavit sworn on 15/5/2024. The gist of the appeal is that the trial court misdirected itself on the identity of the suit land and assumed that the suit land was land parcel number Kiganjo/Kiamwangi/425 which was the subject matter of criminal proceedings in Thika CMC Criminal Case No. 3701 of 2002. The appellant contends that failure to stay dealings in the suit land will render the appeal nugatory.
8. The 1st respondent opposed the application through a replying affidavit dated 2/8/20224. Her case is that the decision of the trial court was based on solid evidence. He adds that the trial court did not issue any positive order, hence there is nothing to stay. The 1st respondent further contends that the lower court did not issue any interlocutory order pending trial and therefore none should be issued by this appellate court. Lastly, the respondent questions the locus standi of the appellant in mounting legal proceedings as a sole administrator yet he is a joint administrator of the estate of the late Ngumi Njuguna
9. The court has considered the application, the response to the application, and the parties' respective submissions. The following two key issues fall for determination in the application:
  - (i) Whether the criteria for grant of an order of stay of execution pending appeal has been met; and
  - (ii) Whether the criteria for grant of an interlocutory injunction by a first appellate court has been met.
10. On the first issue, it is clear from the impugned Judgment that the decree of the trial court is a negative decree. The decree does not have a positive order that would attract an order of stay of execution. Our courts have, in a line of decisions, been categorical that in the absence of a positive order, an order of stay of execution does not lie (see *Western College of Arts & Applied Sciences v Oranga & other* [1976])



KLR 63) Consequently, the finding of the court on the first issue is that the criteria for grant of an order of stay of execution has not been met.

11. Has the applicant satisfied the criteria for grant of an interlocutory injunction by a first appellate court?
12. The applicant is the appellant in this appeal. He wants the status quo to be maintained in relation to land parcel number Kiganjo/Kiamwangi/1070 which the parties contend was the subject matter in the trial court. The nexus between Kiganjo/Kiamwangi/1070 and Kiganjo/Kiambwnagi 962 is, however, not clear at this interlocutory stage of the appeal. The appellant contends that if the title to the suit land is not preserved, the land will be distributed as part of the free net estate of the late Ngatu Ndururume and Mukono Ndururume. He contends that the land is a subdivision that belongs to the late Ngumi Njuguna.
13. Given the above circumstances, the court takes the view that the plea for a status quo order is one to be determined based purely on the balance of convenience. On that basis, there is merit in preserving the status quo relating to the registration of land parcel number Kiganjo/Kiamwangi/1070 for a period of nine (9) months to give the parties a chance to ventilate their respective cases in this appeal. Costs of the application shall be in the appeal.
14. For the above reasons, the application dated 15/5/2024 is disposed as follows:
  - a. The plea for an order of stay of execution pending appeal is rejected on the ground that the impugned Judgment did not have a positive order.
  - b. A status quo order is hereby issued preserving the current registration status of land parcel number Kiganjo/Kiamwangi/1070 for a period of nine (9) months to allow parties time to ventilate their respective cases in this appeal.
15. Lastly, it is clarified that the date for delivery of this ruling was reserved while the Presiding Judge was still stationed at Thika ELC. Effective from 13th January, 2025, the Judge was transferred to Meru ELC and Chuka ELC. It is for this reason that this ruling is being rendered virtually at Meru ELC. The relevant original court file shall be returned to Thika ELC forthwith and the Court Registry at Thika ELC shall upload the ruling onto the CTS immediately.

**DATED SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 30<sup>TH</sup> DAY OF JANUARY 2025**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of;

Mr. Kololo for the Appellant

Court assistant - Tupet

