



Case Number:	Civil Application 186 of 2020
Date Delivered:	02 Oct 2020
Case Class:	Civil
Court:	Court of Appeal at Malindi
Case Action:	Ruling
Judge:	Daniel Kiio Musinga, Mohammed Abdullahi Warsame, Fatuma sichale
Citation:	Yusuf Mwero Mwazengele & 2 others v Benson Baya Yaa (Suing as the Administrator of Omar Bakari Yaa (Deceased) [2020] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Kilifi
Docket Number:	-
History Docket Number:	E.L.C Suit No. 93 of 2017
Case Outcome:	Application allowed
History County:	Kilifi
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**IN THE COURT OF APPEAL**

**AT MALINDI**

**(CORAM: WARSAME, MUSINGA & SICHALE, J.J.A.)**

**CIVIL APPLICATION NO. 186 OF 2020**

**BETWEEN**

**YUSUF MWERO MWAZENGELE.....1<sup>ST</sup> APPLICANT**

**THE HON.ATTORNEY GENERAL.....2<sup>ND</sup> APPLICANT**

**THE REGISTRAR OF TITLES, MOMBASA.....3<sup>RD</sup> APPLICANT**

**AND**

**BENSON BAYA YAA (Suing as the Administrator**

**of OMAR BAKARI YAA (Deceased).....RESPONDENT**

(Being an application for stay against the Judgment of the Environment and Land Court of Kenya at Malindi (Olola, J.) dated 27th May 2020

*in*

*E.L.C Suit No. 93 of 2017.)*

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**RULING OF THE COURT**

1. **UPON** perusing the Notice of Motion dated 29th June 2020 by *Yusuf Mweru Mwazengele*, the 1st applicant, brought under *rules 5(2)(b)* and *41* of the *Court of Appeal Rules*, where the 1st applicant is seeking stay of execution of the judgment issued by *Olola, J.* on 27th May 2020 and all other subsequent orders pending hearing and determination of an intended appeal; and

2. **UPON** perusing the affidavit of the 1st applicant sworn on 29th June 2020 in support of the application which has not been responded to by the respondent, despite service of the application and a hearing notice upon the respondent's advocates, M/S K. Lughanje & Company Advocates; and

3. **UPON** perusing the 1st applicant's advocate's submissions where he has stated, *inter alia*, that the 1st applicant is the registered owner of the property known as *Plot No. 80 Mida*; that his ownership was challenged by the respondent before the trial court; that

the 1st applicant filed a statement of defence; that the hearing was done in the absence of the 1st applicant due to his advocate's mistake; that the trial court failed to deal with the 1st applicant's application dated 26th June 2019 seeking to set aside the ex-parte proceedings and grant him an opportunity to be heard; that the trial court ordered the suit land be transferred to the respondent; that the 1st applicant has filed a notice of appeal against the judgment; and that unless the orders sought are granted the judgment/decreed shall be executed; and

4. **HAVING** considered the principles that guide this Court in determining applications under *rule 5(2)(b)* applications as summarized in *Stanley Kangethe v Tony Ketter & Others [2013] eKLR*, and noting that the applicant has demonstrated that it has an arguable appeal and unless the orders sought are granted the intended appeal shall be rendered nugatory; having reached this conclusion, we make the following orders:-

- i. The Notice of Motion dated 29th June 2020 is hereby allowed.
- ii. The suit land, being **Plot No. 80 Mida**, situated at Mida Creek, shall not be disposed of, leased, or charged by either the 1st applicant or the respondent pending hearing and determination of the intended appeal.
- iii. The costs of this application shall abide the outcome of the intended appeal.

**Dated and delivered at Nairobi this 2<sup>nd</sup> day of October, 2020.**

**M. WARSAME**

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**JUDGE OF APPEAL**

**D. K. MUSINGA**

.....

**JUDGE OF APPEAL**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

*I certify that this is a*

*true copy of the original*

*Signed*

**DEPUTY REGISTRAR**



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