



REPUBLIC OF KENYA



**KENYA LAW**  
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**Munuve v Munuve (Environment and Land Appeal E007 of 2023)  
[2025] KEELC 2962 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2962 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

**TW MURIGI, J  
MARCH 26, 2025**

**BETWEEN**

**DAVID NZIOKA MUNUVE ..... APPELLANT**

**AND**

**PAUL KITAKA MUNUVE ..... RESPONDENT**

**RULING**

1. Before me for determination is the Notice of Motion dated 9<sup>th</sup> June, 2023 brought under Sections 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act in addition to Order 42 Rule 6 of the Civil Procedure Rules in which the Applicant seeks the following orders:-
  1. Spent.
  2. That the Honourable Court be pleased to grant the Applicant/Appellant temporary stay of execution of the judgment delivered on 16/05/2023 pending the hearing and determination of Appeal ELC No. E007 of 2023.
  3. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Paul Kitaka Munuve sworn on even date.

**The Applicants' Case**

3. The Applicant averred that being aggrieved by the judgment delivered on 16/05/2023, he filed an appeal which is meritorious and has high chances of success. The Applicant is apprehensive that the Executive officer will sign the transfer documents in favour of the Respondent if an order of stay is not granted. He contended that he will suffer substantial loss if the judgment is executed as the Respondent will undertake further subdivision, alienation and transfer the suit property to third parties. He argued that the Appeal will be rendered nugatory if the orders sought are not granted.



4. Though duly served, the Respondent did not file any response to the application.
5. On 20<sup>th</sup> June 2023, the court directed that the application be canvassed by way of written submissions.

### **The Appellants/applicants Submissions**

6. The Applicant filed his submissions dated 27<sup>th</sup> December 2023 which I have duly considered.

### **Analysis And Determination**

7. Having considered the application and the submissions by the Applicant, the only issue that arises for determination is whether the Applicant has satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for the grant of stay of execution pending Appeal.

8. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules outlines the guiding principles to be met for the grant of stay and provides that;

6(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

6(2) No order for stay of execution shall be made under sub-rule (1) unless-

- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay and
- b. such security of costs for the performance of such decree or order as may ultimately be binding on him has been given by Applicant.

9. Going by the above provisions of the law, it is clear that in an application for stay of execution pending Appeal, the Applicant must satisfy the following three conditions: -

1. The Court is satisfied that substantial loss may result to the Applicant unless the order is made.
2. The application has been made without unreasonable delay.
3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the Applicant has been given by the Applicant.

10. In considering an application for stay of execution, I am guided by the case of Butt Vs Rent Restriction Tribunal (1982) KLR 417 where the Court of Appeal gave the following guidelines;

“The power of the court to grant or refuse an application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal. The general principle in granting or refusing a stay is; if there is no overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s decision. A judge should not refuse stay if there are good grounds for granting it merely because in his opinion a better remedy may become available



to the Applicants at the end of the proceedings. The court in exercise of its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements.”

11. The grant of an order of stay of execution is a discretionary one. In the case of *RWW Vs EKW* (2019) eKLR the Court held that;

“...the purpose of an application for stay of execution pending an appeal is to preserve the subject in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and The appeal if successful is not rendered nugatory. However, in doing so the court should weigh the right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of damages.”

12. The Court is therefore called upon to balance both the rights of the successful party so as not to hinder him from his fruits of judgment and those of the Appellant whose Appeal may succeed and be rendered nugatory if stay of execution is not granted.

13. The purpose of stay of execution is to preserve the substratum of the case. In the case of *Consolidated Marine Vs Nampijja & Another Civil App No. 93 of 1989* (Nairobi) the Court held that;

“The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory.”

14. On the first condition of proving that substantial loss may result unless stay orders are granted, the Applicant should not only state that he is likely to suffer substantial loss, he must prove that he will suffer substantial loss if stay orders are not granted.

15. In so finding, I am persuaded by the decision in the case of *Charles Wahome Gethi Vs Angela Wairimu Gethi* (2008) eKLR where the Court of Appeal held that;

“...it is not enough for the Applicants to say that they live or reside on the suit land and they will suffer substantial loss. The Applicants must go further and show the substantial loss that the Applicants stand to suffer if the Respondent execute the decree in this suit against them.”

16. What amounts to substantial loss was expressed by the Court of Appeal in the case of *Mukuma Vs Abuoga* (1988) KLR where the Court held that;

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.

17. The Applicant is apprehensive that the Respondent will execute the judgment if stay of execution is not granted. He contended that he will suffer substantial loss as the Respondent will subdivide, alienate and transfer parcel No. Kisau/Mukimwani/1070.

18. In the judgment delivered on 16<sup>th</sup> May, 2023, the court allowed the Plaintiff's suit in the following terms:-



- a. An order compelling the Defendant to transfer Title No. Kisau/Mukimwani/1070 to the Plaintiff forthwith and in default the Executive Officer of this court be empowered to sign all necessary documents required to transfer the said land to the Plaintiff.
  - b. An order compelling the Defendant to handover Title No. Kisau/Mukimwani/1070 together with all the completion documents to the Plaintiff and in default the Land Registrar do dispense with the production of the original title thereof for purposes of effecting the transfer to the Plaintiff.
  - c. Costs of this suit to be borne by the Defendant.
19. It is not in dispute that the Applicant has appealed against the judgment delivered by the lower court. It is also not in dispute that the Appellant was ordered to transfer title No. Kisau/Mukimwani/1070 to the Respondent herein and in default the Executive Officer to sign all the documents required documents to effect the transfer to the Respondent herein. The purpose of stay of execution is to preserve the subject matter pending the hearing and determination of the Appeal. From the foregoing, I am satisfied that if the Respondent executes the judgment, the Applicant will suffer substantial loss which cannot be remedied by an award in damages.
20. In an application for stay of execution pending Appeal, an Applicant must also satisfy the Court that the application has been made without unreasonable delay. It is not in dispute that judgment was delivered on 16<sup>th</sup> May, 2023. The present application was filed in Court on 12<sup>th</sup> June, 2023. I find that the application was filed without undue delay.
21. On the last condition as to the provision of security for costs, Order 42 Rule 6 (2) (b) of the Civil Procedure Rules is couched in mandatory terms to the effect that the Applicant must furnish security for the performance of the order or decree. In the case of *Arun C Sharma Vs Ashana Raikundalia T/A Raikundalia & Co. Advocates & 2 Others* (2014) eKLR, the court held that;
- “The purpose of the security under Order 42 is to guarantee due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor....civil process is quite different because in civil process the judgment is like a debt hence the applicant become and are judgment debtors in relation to the respondent. That is why any security given under order 42 rule 6 of the civil procedure rules acts as a security for the performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”
22. The Applicant has expressed his willingness to provide security as directed by the Court.
23. In the end I find that the Applicant has satisfied the conditions required for the grant of stay of execution pending appeal.
24. The upshot of the foregoing is that the application dated 9<sup>th</sup> June, 2023 is allowed in the following terms;
- i. Stay of execution of the judgment in Makueni MELC No. EO25 of 2021 is granted pending the hearing and determination of the Applicants Appeal.
  - ii. The Applicant shall deposit title No. Kisau/Mukimwani/1070 as security for costs in court within 21 days from the date of delivery of this ruling and in default the stay orders shall lapse automatically.
  - iii. Each party to bear its own costs.



**RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 26<sup>TH</sup> DAY OF MARCH, 2025.**

.....

**HON. T. MURIGI**

**JUDGE**

In The Presence Of

Kavita for the Applicant

Court assistant Hilda Tanui

