



**Bii & 4 others v Cheruiyot (Sued as the Administrator of the Estate of Joseph Kuruiyot Sitienei) & 2 others (Environment and Land Miscellaneous Application E028 of 2024) [2025] KEELC 2842 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2842 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E028 OF 2024**  
**CK YANO, J**  
**MARCH 20, 2025**

**BETWEEN**

**SIMION K.A. BII ..... 1<sup>ST</sup> APPLICANT**  
**LUCY C. KURUI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF DANSON CHEMJOR) ..... 2<sup>ND</sup> APPLICANT**  
**JAMES CHEPKONGA ..... 3<sup>RD</sup> APPLICANT**  
**BENJAMIN K. RUTO ..... 4<sup>TH</sup> APPLICANT**  
**BENEDETA JEPKEMBOI KIPTUM ..... 5<sup>TH</sup> APPLICANT**

**AND**

**FRANCIS KIPLAGAT CHERUIYOT (SUED AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPH KURUIYOT SITIENEI) ..... 1<sup>ST</sup> RESPONDENT**  
**JOHN KIBET KWAMBAI ..... 2<sup>ND</sup> RESPONDENT**  
**MARTIN CHERONO CHEPTARUS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By Notice of Motion dated 18<sup>th</sup> December, 2024, the Applicants sought the following orders: -
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the intended appeal there be stay of implementation and execution of the Ruling of this Honourable Court delivered on 16<sup>th</sup> December, 2024.



- d. That costs of this application be provided for.
2. The application is premised on 6 grounds on its face and supported by the affidavit sworn by Francis Kiplagat Cheruiyot, the 1<sup>st</sup> Respondent/Applicant herein, on even date, on his own behalf and on behalf of the other Applicants.
  3. He avers that being aggrieved/ dissatisfied with the ruling of this court delivered on 16/12/2024, they intend to appeal against the said ruling and have since lodged a Notice of Appeal dated 18/12/2024 and applied for the typed proceedings thereto. He annexed copies of the same and payment receipt as proof.
  4. It is his contention that the intended appeal will be rendered nugatory unless the orders for stay of execution sought are granted. Further, it is his claim that they have been in quiet and peaceful occupation of the suit properties; Karuna/ Karuna Block 2 (Karuna)/74 and 177, for more than 50 years and have even settled their families therein.
  5. He thus contends that they stand to suffer irreparably and further that the intended appeal risks being rendered nugatory unless the orders sought are granted.
  6. He maintained that the application had been filed without undue delay and in good faith and thus urged the court to preserve the substratum of the intended appeal in the interest of justice by allowing the application as sought.
  7. The application was opposed. The Applicants/Respondents filed a Replying Affidavit dated 20.1.2025 and sworn by the 1<sup>st</sup> Applicant/Respondent, James K. Chepkonga, on his own behalf and on behalf of the other Applicants/Respondents. He dismissed the application as being frivolous, made without basis and an abuse of the court process.
  8. It was his claim that the instant application is a delaying tactic; that the applicants have dragged them in several court cases for over 21 years and maintained that litigation must certainly come to an end. That the instant application is aimed to delay their rights to assume possession and usage of the land over the court processes.
  9. He further contended that this court had pronounced itself on three previous occasions over the issue of ownership of the suit property. That the impugned ruling of 16/12/2024, expressly ordered the applicants to vacate the suit properties within 14 days from the date of the ruling but that they are yet to vacate the suit parcels in sheer contempt of the court order.
  10. It was his claim that from a reading of paragraph 24 of the impugned ruling, it is his understanding that an application for stay of execution as the one herein, is not one of the reliefs contemplated under section 152F of the Land Act.
  11. He thus urged the court to dismiss the application with costs.
  12. The Application came up for interpartes hearing on 13<sup>th</sup> February, 2025. Mr. Kibii was present for the Applicants while there was no representation for the Respondents. Mr. Kibii informed the court that they have never been served with any response to their application dated 18/12/2024 and consequently asked the court to look at the application and give a ruling date.
  13. I do however note that the Respondents' filed their Replying Affidavit dated 20/1/2025 in response to the application for stay of execution. I will therefore proceed to consider both the application and the response thereto and determine the application as hereunder.



### **Analysis and Determination:**

14. Having carefully considered the Application and the grounds thereof, the Supporting Affidavit and the annexures and the Replying Affidavit thereto, it is my considered view that the main issue arising for determination is;
  - i. Whether an Order for Stay of Execution can issue against ruling and consequential orders issued on 16<sup>th</sup> December, 2024.
15. It is now well settled that no appeal shall operate as an automatic stay of execution. Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 empowers the court to stay execution, either of its judgment or that of a court whose decision is being appealed from, pending appeal while Rule 6(2) provides the conditions to be met in an application for stay of execution.
16. Order 42 Rule 6(2) provides as follows: -
  - (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 as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant. (emphasis mine)
17. The three prerequisite conditions from the above are thus;
  - i. The Court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered;
  - ii. The application is brought without undue delay and
  - iii. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.
18. The purpose and objective of the order for stay of execution is to preserve the substratum of the appeal in order to ensure that the appeal is not rendered nugatory and further to ensure that the rights of the applicants are safeguarded. See *Consolidated Marine. vs. Nampijja & Another*, Civil App.No.93 of 1989 (Nairobi).
19. The first ground to be established is whether the applicants will suffer substantial loss unless orders for stay of execution are granted. What amounts to substantial loss was expressed in the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, where the court held as follows: -

“No doubt in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.” (emphasis added)



20. The applicants are under a duty to demonstrate the loss they are likely to suffer unless the order for stay of execution sought is granted. It is not sufficient to merely state that substantial loss will occasion without giving sufficient cause to warrant the exercise of discretion in their favor.
21. From a cursory look at the Supporting Affidavit, the applicants merely stated that they have occupied the suit properties for a period of more than 50 years and have even settled their families thereon. They further deponed that the intended appeal will be rendered nugatory hence the need to preserve the substratum of the appeal.
22. The onus was on the applicants to demonstrate how the execution process will irreparably affect them and occasion them substantial loss to their detriment and consequently render the appeal nugatory, in my view, which was not done in this case.
23. I do note that the Applicants were directed to vacate the suit properties Karuna/ Karuna Block 2 (Karuna)/74 and 177 within a period of 14 days from the date of the ruling and in default for forceful eviction to issue, with strict compliance with the mandatory provisions of section 152 G of the [Land Act](#). The court further noted that the ownership of the land had already been determined by the Kapseret Land Disputes Tribunal, which decision was adopted by the Eldoret CM's Court in Award No. 8 of 2003. No appeal was preferred against that decision, and the award or decree still stands.
24. In view of the foregoing, I find and hold that the applicants have not established sufficient cause for issuance of the orders sought herein.
25. On whether the Application has been filed without undue delay, I do note that the impugned ruling was delivered on the 16/12/2024 while the instant application was filed on 18/12/2024, within 2 days from the date of the ruling. I therefore find that the application was filed timeously without unreasonable or inordinate delay. However, as already stated, no sufficient cause has been shown to the court to warrant the grant of the orders of stay. Further, from a look at the application and the supporting affidavit, I have noted that the applicants have not expressed whether they are ready to offer security for costs.
26. This court takes judicial notice of the numerous cases filed by the parties herein in respect to the suit properties herein Karuna/ Karuna BLOCK 2 (Karuna)/74 and 177, spanning over 21 years. I am therefore not persuaded to grant the stay orders sought as the Respondents who are the successful litigants should not be deprived of the fruits of their judgment any further.
27. In view of the foregoing, I find that the Applicants have not satisfied the 3-limb test provided under the Civil Procedure Rules to the required standard.
28. In the upshot, I accordingly find that the Application dated 18<sup>th</sup> December, 2024 is not merited and is hereby dismissed with costs to the Respondents.
29. It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET THIS 20<sup>TH</sup> DAY OF MARCH, 2025.**

**HON. C. K. YANO**

**JUDGE**

Ruling delivered in the presence of: -

Mr. Kibii for the Applicants.

No appearance for the Respondents



