



Malili Ranch Co Limited v Katilu (Suing as the person representative of the Estate John Kangwalla Katilu) & another (Environment and Land Appeal E001 of 2024) [2025] KEELC 1384 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1384 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E001 OF 2024
EO OBAGA, J
MARCH 20, 2025**

BETWEEN

MALILI RANCH CO LIMITED APPELLANT

AND

**FRANCISCA KANGWALLA KATILU (SUING AS THE PERSON REPRESENTATIVE OF THE ESTATE JOHN KANGWALLA KATILU) 1ST RESPONDENT
BEATRICE NDUMBULA MUTUA & 2 OTHERS (SUED AS THE PERSONAL REPRESENTATIVE OF THE PETER MUTUA KANYI) 2ND RESPONDENT**

(An appeal from the entire judgment of Senior Resident Magistrate Court, Kilungu (Hon. Geno Okwengu) delivered on 26th February, 2024, in Kilungu MELRC No. 17 of 2019)

RULING

1. This is a ruling in respect of a Notice of Motion dated 30th September, 2024 in which the Appellant/Applicant seeks the following orders:
 1. Spent
 2. Spent
 3. That there be a stay of execution proceedings and or of the Decree in Kilungu MELC E043 of 2022 pending the hearing and determination of the appeal herein.
 4. That costs of this application be in the appeal.



2. The Appellant contends that it has filed and appeal against the judgment of Kilungu Magistrates ELC No. E043 of 2022 and that if stay of execution is not granted, the Applicant's appeal will be rendered nugatory.
3. The Applicant states that as at the time judgment was delivered, it had no assets as it had distributed all its land to its shareholders and that the remaining land was sold to the government to construct Konza City. The Applicant further states that if execution proceeds, it will affect innocent third parties in the believe that the attached properties belong to it.
4. The application was opposed by the 1st Respondent though a replying affidavit sworn on 24th October, 2024. The Respondent states that her late husband was a member of the Applicant which is a land buying company. Her husband who died on 2nd January, 2017 had been allocated Agricultural land parcel number 1933. He died before he could be given title.
5. The 1st Respondent later learnt that the plot in issue had been given to one Peter Mutua Kanyi by the Applicant. She then filed a suit against the Applicant and 2 others. She obtained judgment in her favour. She contends that the Applicant has not met the threshold for grant of stay pending appeal.
6. Parties were directed to file written submissions. The Applicant filed its submissions dated 7th November, 2024. The 1st Respondent filed her submissions dated 22nd November, 2024. I have considered the Applicant's application, the opposition to the same by the 1st Respondent, the submissions of the parties as well as the authorities cited. The only issue for determination is whether the Applicant has met the threshold for grant of stay of execution pending appeal.
7. The conditions for grant of stay pending appeal are contained in Order 42 Rule 6(1) and (2) of the Civil Procedure Rules. The conditions are firstly, that the application for stay should be brought without unreasonable delay. Secondly, that Applicant has to demonstrate that if stay of execution is not granted he/she will suffer substantial loss. Thirdly, there has to be security given for the due performance of the decree as may ultimately be binding upon the Applicant.
8. In the instant case, the impugned judgment was delivered on 26th February, 2024. This application was filed after seven months without any explanation for the delay. I find that in the circumstances of this case, the delay of over seven months is unreasonable.
9. The Applicant was ordered to give the 1st Respondent parcel No. 1933 or in the alternative give her a suitable agricultral land in place thereof. The 1st Respondent was aware that the Applicant had sold parcel No. 1933 to Peter Mutua Kanyi that is why she prayed that she be given a suitable agricultural plot in place of parcel 1933.
10. The Applicant has not demonstrated what substantial loss it will suffer if execution proceeds. The taxed costs are Kshs.107,515. There is no evidence that the 1st Respondent will not refund the said amount in case the Applicant's appeal succeeds. Demonstration of substantial loss is the cornerstone of any grant of stay of execution pending appeal. This application was filed after the Applicant had been served with a decree and certificate of costs. The Appellant had filed an appeal on 8th March, 2024 and if there was any threat, the application should have been filed in the month of March when the appeal was filed.
11. The issue of the Applicant attaching other innocent third parties properties does not arise and the Appicant cannot speculate or try oto safeguard third parties who are not party to the appeal or even the decree of the lower court. The letters attached to the Applicant's further affidavit is not demonstration of substantial loss.



12. Security of costs is normally given where there is demonstration of substantial loss. The fact that costs have been taxed and execution might follow is no reason to grant stay of execution. In the case of Ndungu -Vs- Mutua (Civil Appeal No. E047 of 2024 (2024) KEHC 6276 (KLR) (30 May, 2024 (Ruling), it was held as follows:

“It is trite law that execution is a lawful process and it is not a ground for granting stay of execution. The Applicant is required to show how execution shall irreparably affect him or will alter the status quo to his detriment therefore rendering the appeal nugatory.....”

13. The purpose of an application for stay of execution was expressed in the case of RWW -Vs- EKW (2019) eKLR as follows:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in 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 this 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 costs.....”

14. From the decision of RWW -Vs- EKW (Supra), it is clear that the Applicant will not suffer any loss which will not be compensated by an award of costs. I therefore find that the Applicant’s application is devoid of merit. The same is dismissed with costs to the 1st Respondent.

It is so ordered.

.....

HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF MARCH, 2025.

In the presence of:

Ms. Mulupi for Mr. Mutua for Appellant/Applicant.

Court assistant - Steve Musyoki

