



**Njoroge v Mugobelo & 2 others (Environment & Land Case  
90 of 2018) [2025] KEELC 3166 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3166 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 90 OF 2018  
OA ANGOTE, J  
APRIL 8, 2025**

**BETWEEN**

**PETER NJUGUNA NJOROGE ..... PLAINTIFF**

**AND**

**HARRISON ISINGA MUGOBELO ..... 1<sup>ST</sup> DEFENDANT**

**EMBAKASI PATANISHO JUA KALI ASSOCIATION (SUED THROUGH  
ITS SECRETARY AND TREASURER) SAMUEL KARIUKI & IRERI**

**NJAGI ..... 2<sup>ND</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before this court is a Notice of Motion application dated 8<sup>th</sup> March 2024 and filed by the 1<sup>st</sup> Defendant/Applicant pursuant to Sections 1A and 3A of the [Civil Procedure Act](#) and Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Rules](#). The 1<sup>st</sup> Defendant has sought the following orders:
  - i. That this Honourable court do issue a temporary stay of execution of the warrants of attachment issued herein on the 5<sup>th</sup> day of March 2024 pending the hearing and determination of this application (sic).
  - ii. That the costs of this application be costs in the cause.
2. The application is based on the grounds set out in the Affidavit sworn by the 1<sup>st</sup> Defendant, Harrison Isinga Mugobelo. The 1<sup>st</sup> Defendant deposed that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are the judgment debtors herein and that in the judgement against them, they were directed to pay Kshs 1,494,115 to the Plaintiff/Respondent together with costs. He deposed that the court did not pronounce itself on how the apportionment of the decree and costs were to be paid between the judgment debtors.



3. The 1<sup>st</sup> Defendant asserts that he has also filed an application which is pending before this court for determination, which is seeking among others, prayers to set aside the entire judgment based on the negligence of his previous advocates where the matter proceeded undefended, and that the Judgment was against all the Defendants and it would be unfair that he would have to shoulder all the burden of paying the decretal sum and costs of the suit.
4. In the Plaintiff's Replying Affidavit dated 21<sup>st</sup> March 2024, he deponed that the application is fatally defective, bad in law, misconceived, lacking merits and frivolous; that the application is full of falsehoods and is a calculated move to deceive this Honourable court and that the 1<sup>st</sup> Defendant does not deserve the exercise of this court's discretion.
5. The Plaintiff asserted that it is preposterous to allege that this court did not pronounce itself on how the costs and judgment debt was to be apportioned between the defendants and that the judgment entered on 9<sup>th</sup> February, 2023 was explicit and unequivocal in the following terms:
  - a. That the 1<sup>st</sup> Defendant to pay to the Plaintiff damages for trespass of Kshs. 1,000,000/-
  - b. That the 1<sup>st</sup> Defendant to pay interest on the above amount at court rates from the date of this judgement until payment in full.
  - c. That the 1<sup>st</sup> Defendant to pay the costs of the suit.
6. The Plaintiff further asserts that it not true that there is an application to set aside the entire judgment. The application was canvassed by way of written submissions which I have considered.

### **Analysis and Determination**

7. This is a post-judgment application that has been filed by the 1<sup>st</sup> Defendant, following delivery of the judgment by this court on 9<sup>th</sup> February 2023. In its judgment, this court allowed the Plaintiff's suit and declared the Plaintiff to be the legal owner of the suit property. The court issued injunctive orders against the Defendants, and ordered the 1<sup>st</sup> Defendant to pay the Plaintiff Kshs 1,000,000 with interest at court rates. The court also directed the 1<sup>st</sup> Defendant to pay the costs of the suit.
8. The 1<sup>st</sup> Defendant has filed this application pursuant to Order 42 Rule 6(1) and (2) of the [\*Civil Procedure Rules\*](#) and has sought that this court stays the execution of the warrants of execution issued on 5<sup>th</sup> March 2024. Order 42 Rule 6(1) and (2) of the [\*Civil Procedure Rules\*](#) state as follows:
  - “(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.
  - (2) No order for stay of execution shall be made under subrule (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.”
9. Accordingly, an application under Order 42 Rule 6 should establish that the application has been made without undue delay, that the applicant stands to suffer substantial loss and a court is then to stipulate the requisite security for the due performance of the decree or order.
10. The purpose of an application of stay of execution is to preserve the subject matter of an appeal. This was aptly stated in *RWW v EKW* [2019] KEHC 6523 (KLR) as follows:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter 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 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.”
11. The 1<sup>st</sup> Defendant has not filed any Notice of Appeal against the judgment dated 9<sup>th</sup> February 2023 nor has a substantive appeal been filed. Under Rule 77(2) of the *Court of Appeal Rules*, a Notice of Appeal should be filed within 14 days after the date of the decision against the decision for which appeal is lodged.
12. This application was filed one year and one month after the judgment was delivered and after the 1<sup>st</sup> Defendant’s window for filing an appeal has long expired. Furthermore, no application for extension of time to file an appeal out of time has been filed by the 1<sup>st</sup> Defendant.
13. There is therefore no basis for this court to issue orders of stay, as there is clearly no appeal pending with respect to the judgment of this court.
14. Further still, the 1<sup>st</sup> Defendant has not detailed the substantive loss he stands to suffer should this court decline to issue the stay orders sought. As ably stated in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the fact that execution has been put in motion does not amount to substantial loss.
15. It is necessary for this court to state that there is no ambiguity in its final orders, neither did it err when it ordered the 1<sup>st</sup> Defendant pay the costs of the suit. It is trite that the award of costs is a matter of a court’s discretion, which in this case was exercised against the 1<sup>st</sup> Defendant.
16. Furthermore, while the 1<sup>st</sup> Defendant has stated that there is before this court another application seeking to set aside the judgment dated 9<sup>th</sup> February 2023, no such application has been filed by the 1<sup>st</sup> Defendant.
17. In the absence of any appeal pending before the Court of Appeal, and the 1<sup>st</sup> Defendant having failed to establish the substantial loss it stands to suffer should this court decline to grant the orders sought, this court must find that the 1<sup>st</sup> Defendant’s application dated 8<sup>th</sup> March 2024 lacks merit.



18. The application dated 8<sup>th</sup> March 2024 and is hereby dismissed with costs to be paid by the 1<sup>st</sup> Defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Kamwenda for Plaintiff

Ms. Mutinda for 2<sup>nd</sup> Defendant

No appearance for 1<sup>st</sup> Defendant

Court Assistant: Tracy

