



**Waithaka & 26 others (Suing as the registered Official and Representative of Ruai Squatters Welfare Society) v City Council of Nairobi & 7 others; Ondum & others (Appearing on behalf of Ruai Mathare 4A Self Help Group) & 2 others (Interested Parties) (Environment & Land Case 351 of 2011 & 153 of 2010 & 1214 of 2007 & 1417 of 2013 (Consolidated)) [2025] KEELC 3198 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3198 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 351 OF 2011 & 153 OF 2010  
& 1214 OF 2007 & 1417 OF 2013 (CONSOLIDATED)**

**AA OMOLLO, J  
APRIL 8, 2025**

**BETWEEN**

**JAMES KARIUKI WAITHAKA ..... 1<sup>ST</sup> PLAINTIFF  
JANE GIKUYA ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE REGISTERED OFFICIAL AND REPRESENTATIVE OF RUIAI  
SQUATTERS WELFARE SOCIETY**

**AND**

**THE CITY COUNCIL OF NAIROBI ..... 1<sup>ST</sup> DEFENDANT  
RENTON COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**OLUM ONDUM & OTHERS (APPEARING ON BEHALF OF RUIAI MATHARE  
4A SELF HELP GROUP) ..... INTERESTED PARTY**

**AS CONSOLIDATED WITH  
ENVIRONMENT & LAND CASE 153 OF 2010**

**BETWEEN**

**ABDI ALI FUGICHA & 20 OTHERS & 20 OTHERS & 20 OTHERS & 20  
OTHERS & 20 OTHERS & 20 OTHERS ..... PLAINTIFF**

**AND**



**JAMES M GITUNDU & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS ..... DEFENDANT**

**AND**

**PETER SAKALA MESHACK OLANDOH MARTIN OROBI ROSE OSITA ROSE ALUSO ASICHE (SUING AS OFFICIALS OF EX-RANCHING EMPLOYEES SELF HELP GROUP) ..... INTERESTED PARTY**

**JOSEPH WAIREGI DANIEL WANJIE LAMECK ALEX KIOKO NTHIWA (SUING AS OFFICIAL OF KAMUNYONGE GATWORO SQUATTERS SELF HELP GROUP) ..... INTERESTED PARTY**

**AS CONSOLIDATED WITH  
ENVIRONMENT & LAND CASE 1214 OF 2007**

**BETWEEN**

**JOSEPH WAIREGI ..... 1<sup>ST</sup> PLAINTIFF**

**JOSEPH KAIRU ..... 2<sup>ND</sup> PLAINTIFF**

**JOHN WARUINGI ..... 3<sup>RD</sup> PLAINTIFF**

**SUING AS THE CHAIRMAN, TREASURER & PATRON RELATIVELY OF  
KAMUNYONGE GWATOTO SELF HELP GROUP**

**AND**

**CITY COUNCIL OF NAIROBI ..... DEFENDANT**

**AS CONSOLIDATED WITH  
ENVIRONMENT & LAND CASE 1417 OF 2013**

**BETWEEN**

**ABDI ALI FUGICHA & OTHERS ..... PLAINTIFF**

**AND**

**CITY COUNCIL OF NAIROBI ..... DEFENDANT**

**RULING**

1. The Applicant/2<sup>nd</sup> Defendant filed a notice of motion dated October 30 2024 supported by an affidavit and supplementary affidavit both sworn by Juliet Mukami Theuri on October 30 2024 and February 11<sup>th</sup> 2025 respectively seeking for the following orders;
  1. Spent
  2. Spent



3. There be a Stay of Execution of the Decree issued herein on 3<sup>rd</sup> October 2024 pending the hearing and determination of the Intended Appeal.
4. The costs of this application to abide by the outcome of the Appeal.
2. The motion is based on the grounds that the Plaintiffs filed a lawsuit claiming ownership of land identified as L.R. 12979/1/R or L.R. 12979/1, which resulted in a judgment on October 3, 2024, by this court. That the judgment canceled the 2<sup>nd</sup> Defendant's title to L.R. 12979/4 and declared the Plaintiffs and Interested Parties as the rightful owners, as well as ordering the 1<sup>st</sup> Defendant to facilitate their resettlement.
3. The 2<sup>nd</sup> Defendant, aggrieved by the judgment, filed this application seeking Stay of Execution pending determination of appeal, arguing that without it, the Plaintiffs and Interested Parties, numbering in their thousands, may invade the property and adversely affect the title. The 2<sup>nd</sup> Defendant contends that the dispute involves land, a fixed asset, and not monetary compensation, making security unnecessary, and that no prejudice would result to the Plaintiffs and Interested Parties if the Stay is granted until the appeal is determined.
4. In opposition the Interested parties, Kamonyonge/Gatworo Squatters Self Help Group and Ruai-Mathare 4A self-help group filed replying affidavits sworn by Joseph Wairegi Gachie on 14<sup>th</sup> January 2025 and Joseph Sayi Maina on 22<sup>nd</sup> January 2025 respectively. They stated that the Applicant has caused them untold suffering for many years thus should not be allowed to prolong it.
5. That putting them in possession of the land would not put it out of reach of the Applicant in the event that the appeal is successful. They also stated that this court has no jurisdiction to determine the application and that the motion is purposed to deny them from enjoying the fruits of the judgement. The Interested parties argued that they have suffered substantial loss that should be borne by the Applicant.
6. The Plaintiffs also opposed the motion vide replying affidavits sworn by Abdi Ali Fugicha on 5<sup>th</sup> February 2025 stating that parcel LR No.12979/4 upon which the Applicant hinges its motion for stay does not exist. That the orders sought would largely be conclusive of the main appeal which would be rendered nugatory.
7. The Plaintiffs stated that the Application does not meet the legal threshold for grant of such orders and by not granting them the applicants will suffer no prejudice.
8. That there is no demonstration about the purported threats by the Respondents to invade the suit land and the Appeal as brought has low chances of success.

**Submissions:**

9. The 2<sup>nd</sup> Defendant/Applicant did not file submissions in support of their application within the agreed and set timelines. On the other hand, the Respondents filed written submissions as follows; the 1<sup>st</sup> Plaintiff filed submissions dated 19<sup>th</sup> February 2025, Ruai- Mathare 4A Self Help Group filed submissions dated 22<sup>nd</sup> January 2025 and the Kamunyonge/Gatworo Squatters Self Help group filed submissions dated 11<sup>th</sup> February 2025.
10. It is their argument that the object of stay is to maintain the status quo and preserve the subject matter of the suit. Thus, the applicant must establish sufficient cause, satisfy the court that substantial loss would ensue from refusal to grant stay and the applicant must furnish security. In support they cited the case of *Kingorani Investments Limited vs Kenya Commercial Bank Limited* HCCC 113 of 2007.



11. They also stated that the subject land will be available to whichever party is declared owner on appeal and further security is not necessary.

**Analysis and determination:**

12. I have read the grounds and the affidavits (together with the annexures) made in support of the application for the grant of the orders of stay of execution. I have also considered the Replying affidavits and submissions together with case law cited in opposition to the application.
13. The main issue for determination is whether the applicant has demonstrated that the orders of stay of execution pending appeal are merited. The principles governing the grant of a stay of execution pending appeal are well settled. They are provided for under Order 42 rule 6(2) of the [Civil Procedure Rules](#) which provides:

“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
- b. 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.

14. The court, in [RWW v EKW](#) [2019] eKLR, considered the purpose of a stay of execution order pending appeal, in the following words:

“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.

9. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

15. First, on the ground whether the application was brought without delay, i am satisfied that there has been no delay in bringing the instant application. The judgment and decree being appealed against was delivered on 3<sup>rd</sup> October 2024 and application for stay filed within the same month of October 2024. The Applicant also filed a notice of appeal dated October 4 2024 within the time provided for lodging an appeal to the Court of Appeal.

16. This court is not required to consider whether the intended appeal has high chances of succeeding rather, its role is to determine whether or not the applicant stands to suffer substantial loss if the order of stay is not granted. In discussing what amounts to substantial loss, Ogolla, J in *Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331 stated that:

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.’



17. In the case of *Century Oil Trading Company Ltd vs. Kenya Shell Limited* Nairobi (Milimani) HCMCA No. 1561 of 2007, Kimaru, J stated that:

“The word “substantial” cannot mean the ordinary loss to which every judgement debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the Code expressly prohibits stay of execution as an ordinary rule it is clear the words “substantial loss” must mean something in addition to all different from that..”

18. In this case, the pleadings and the evidence does bear that it was the Applicant who was in physical possession of the suit land as well as holding title in its name. This status has not changed but is likely to change in the event the orders of stay is not granted. The Applicant argues that the Plaintiffs and Interested Parties, numbering in their thousands, may invade the subject property and adversely affect the title.

19. If this court declines to grant the stay of execution and the Respondents who there is no dispute are several in number, will take possession and probably divided the suit land and change its structure that will be highly detrimental to the Applicant. Secondly, there will be costs incurred to obtain vacant possession back as the Respondents have not given undertaking to voluntarily surrender vacant possession in the event the Applicant’s appeal succeeds. Thus, the Applicant has shown that it will suffer substantial loss unless the stay is granted.

20. Thirdly, on the issue of security, this Court must consider the overriding objective and balance the interest of the parties to the suit while considering the issue of security to be offered. This is a non-monetary Decree/judgment so the issue of security for costs do not apply. However, for avoidance of doubt and to protect the interests of the Respondents, this court does grant an order for stay for a limited period and also order the Applicant not to part with possession of the suit land and not to undertake any new developments on it during the pendency of the appeal.

21. In conclusion, the application is allowed and the following orders issued:

- a. There be a Stay of Execution of the Decree issued herein on 3<sup>rd</sup> October 2024 for a period of eighteen months (one and half years) from the date of this order/ruling and or the stay lapses if the appeal is determined earlier.
- b. The Applicant not to part with possession of the suit land and not to undertake any new developments on it during the pendency of the appeal.
- c. The costs of this application to abide the outcome of the Appeal.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> OF APRIL 2025**

**A. OMOLLO**

**JUDGE**

