



**Jatropower Kenya Limited v Tanui (Environmental and Land Originating Summons E010 of 2023) [2025] KEELC 3110 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3110 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2023**

**A OMBWAYO, J**

**APRIL 4, 2025**

**BETWEEN**

**JATROPOWER KENYA LIMITED ..... RESPONDENT**

**AND**

**DAVID K TANUI ..... APPLICANT**

**RULING**

1. David K Tanui, hereinafter referred to as the applicant has come to court against Jatropower K Ltd with an application dated 4th February 2025 seeking orders that this court be pleased to issue an order of temporary stay of execution of the Judgment Decree and Orders of this court delivered on 30th January 2025 pending the hearing and determination of the intended Appeal at the court of appeal.
2. The application is based on grounds the claim herein was instituted by the: plaintiff through an Originating Summons and the defendant filed a reply in opposition thereto. The court gave directions on its hearing and fixed a date for judgment initially for 2rd January 2025 and later adjourned to 30th January 2025 when the same was delivered. Judgment was delivered against the defendant and being dissatisfied with the court findings has sought an appeal to the court of appeal.
3. The applicants appeal raises serious triable issues and with high chances of success.
4. The consequence of the court's judgment is that the applicant will be disposed of his tittle deed rightfully acquired as well as his part consideration which he paid. The subject land register will certainly be affected against the applicant and the appeal will be rendered nugatory. The applicant is also apprehensive that the parcel of land may further change hands and will complicate the issues further to his detriment. It is therefore necessary and, just that an order of stay be issued to forestall any further harm. against the applicant.
5. In the supporting affidavit, the applicant reiterates the grounds of the application and adds that unless a stay of execution is granted the applicant shall suffer substantial loss if the decree is executed.



6. The respondent in reply states that the Applicant has failed to demonstrate any sufficient grounds to warrant the grant of a stay of execution, as required under the Civil Procedure Rules. It is trite law that an appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order stay of execution are provided for under Order 42 Rule 6 *Civil Procedure Rules*. This court has held elsewhere that it is trite law that execution is a lawful process and it is not a ground for granting stay of execution. Further, 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.
7. Even when execution has been levied and completed it does not in itself amount to substantial loss. 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 grounds of appeal as set out in the motion pertain to points of fact. Thus it is evident that the chances of the intended appeal succeeding in the event this application is granted, are quite limited.
8. The Applicant's claim that the appeal raises triable issues with high chances of success is contradictory and misleading, as evidenced by paragraph 5 of his own application where he admits that he never completed payment of the full purchase price. This admission confirms that the title was not lawfully acquired, thereby negating any alleged triable issues and/or chances of success. The Applicant cannot claim that he will be dispossessed of a title that was acquired irregularly, and which this Honorable Court has already found to be null and void. The execution of the judgment will merely correct the irregularity and restore the rightful ownership of the property to the Respondent. The mere dissatisfaction with the judgment of this Honorable Court is not a ground for stay of execution. The Applicant must demonstrate substantial loss which he has failed to do. Further the Applicant has not offered any such for the due performance of such decree or order as may ultimately be binding on him. It is a fundamental factor to bear in mind that a successful party is prima facie entitled to fruits of his judgment hence the consequence of a judgment is that it has defined the rights of a party with definitive conclusion.
9. I have considered the application replying affidavit and rival submissions and do find that the application was filed timeously and that there is an appeal filed in the Court of Appeal.
10. The order of stay of execution pending appeal is governed by Order 42 Rule 6 of the *Civil Procedure Rules*. The grant of the order is discretionary although, as it has been said often, the discretion must be exercised judicially, that is to say, judiciously and upon defined principles of law; not capriciously or whimsically. Therefore, stay of execution should only be granted where sufficient cause has been shown by the Applicant. And in determining whether sufficient cause has been shown, the court should be guided by the three prerequisites provided under Order 42 Rule 6 of the *Civil Procedure Rules*, that:
  - a. The application is brought without undue delay
  - b. The court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered; and
  - c. 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. at
11. This court has already found that the application was brought to court timeously.



12. The issue of substantial loss was discussed in the case of Kenya Shell Limited vs. Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) KAR 1018 where the Court of Appeal stated that:
- “It is usually a good rule to see if Order 41 Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdiction for granting stay”
13. The issue was also discussed in the case of Bungoma Hc Misc Application No 42 of 2011 [\*James Wangalwa & Another vs. Agnes Naliaka Cheseto\*](#) that:
- “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. This is what substantial loss would entail...”
14. In the case of [\*Machira t/a Machira & Co. Advocates vs. East African Standard\*](#) (No 2) (2002) KLR 63, that;
- “In this kind of applications for stay, it is not enough for the applicant to merely state that substantial loss will result. He must prove specific details and particulars... where no pecuniary or tangible loss is shown to the satisfaction of the court, the court will not grant a stay...”
15. I have extensively discussed this matter above and I cite the case of Jason Ngumba [2014] eKLR that:
- “...Here, it is not really a question of measuring the prospects of the appeal itself, but rather, whether by asking the Applicant to do what the judgment requires, he will become a pious explorer in the judicial process.
16. But what was stated in the case of [\*Absalom Dova vs. Tarbo Transporters\*](#) [2013] eKLR is relevant, that:
- “The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination”.
17. In this case, the applicant not demonstrated that he is likely to suffer substantial loss if stay of execution is not granted because the property will revert to the respondent if stay is not granted. This court observes that though execution of a decree per-se does not demonstrate substantial loss, the prosecution of the appeal should not be rendered an academic exercise. However, any party alleging substantial loss must prove the same. In this case, the court found that the applicant and the respondent entered into a land sale agreement wherein the consideration was Kshs5,000,000. The applicant paid Kshs500,000 whereas the balance of kshs4,500,000 has not been paid to-date. The applicant has stated in the supporting affidavit the substantial loss he is likely to suffer in view of the fact that the land is registered in his name after paying Kshs500,000 is that he is likely to lose the property registered in his name. The upshot of the above is that the applicant has demonstrate that he will suffer substantial loss which is the cornerstone of grant of orders of stay of execution of a decree. The court notes that at the time of this ruling, the respondent has already caused the property to be transferred back to his name



and therefore I order that the Land Registrar Nakuru be restrained from dealing in any manner with the property registration number LEMBUS/KIPTUIM/312 pending the hearing and determination of the appeal. On security for costs, I do order the applicant to deposit ksh 4, 500,000 in a joint interest earning account to be opened in the names of the two advocates for the parties. Costs of the application in the appeal.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

**ENVIRONMENT AND LAND COURT**

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**THE JUDICIARY OF KENYA**

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