



REPUBLIC OF KENYA



**Hika v Kagwima (Environment and Land Appeal E012 of 2024)
[2025] KEELC 4263 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4263 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL E012 OF 2024**

JM KAMAU, J

MAY 28, 2025

BETWEEN

SIMON KIMANI HIKA PLAINTIFF

AND

ROBERT WAIRIRI KAGWIMA DEFENDANT

RULING

1. The Appellants filed an Application dated 13/3/2025 under Order 22 Rule 25, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules. They seek for a stay of execution against the Decree issued on 12/3/2025 delivered by this court dismissing the entire Appeal from the Engineer Principal Magistrate Honourable Ms E.Wanjala. Being dissatisfied with the judgement of this Court, the Appellants intend to appeal to the Court of Appeal and have already filed the Notice of Appeal. They fear that should there be no stay from this court, then the Appellants intended Appeal would be rendered nugatory. Although this is not necessary, the Appellants state that their Appeal raises triable issues and the same has high chances of success. They claim that the Respondent would evict them from the suit land where they have resided since 1970's to date if the sought for stay is not granted.
2. They also claim that no prejudice would be occasioned to the Respondent should the stay be granted as he has never been in occupation of the said property.
3. The Application was brought timelessly and without inordinate delay. The same is supported by the Affidavit of Haron Njoroge Hika, the 2nd Appellant.
4. The Application was opposed vide Replying Affidavit sworn and filed in court on 26/3/2025 by the Respondent, Robert Wairiri Kagwima where he depones that the Decree is incapable of being stayed. He then depones that the Judgement left each party in the same position they were in as they came to court and reaffirmed the Respondent as the legal proprietor of the suit property, that the Respondent



has taken steps to remove the Appellants, among others, from the land and that they should be left to enjoy the fruits of their successful litigation.

5. I have looked at the rival submissions and I also observe that the intended Appeal is a second attempt. This is a non-monetary Decree. The Appellants' fear is real that eviction may be carried out at any time. That is if it has not already taken place. The Appellants claim to have been on the suit land since the 1970's. Should they continue staying on and cultivating the land for another I don't know how many years? This, as the Respondent preserves his Decree in his suitcase. He has already lost more than 5 decades of his land and the Appellants expect him to lose more. This notwithstanding that the Respondent was not awarded mesne profits. However, I agree with the Appellants that their Appeal would be rendered nugatory should they succeed on Appeal if they lost this Application. Stay of execution is provided for under Order 42 Rule 6 of the Civil Procedure Rules:
 - (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 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.
 - (3) Notwithstanding anything contained in sub rule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application. 112 [Rev. 2020] Civil Procedure CAP. 21 [Subsidiary]
 - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
 - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 - (6) Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
6. I will therefore do a balancing act in order to preserve the land until the intended Appeal in the Court of Appeal is finally heard and determined.
 1. The Title Deed in respect to the suit land i.e. land parcel No NYANDARUA/MALEWA 166 shall remain in the names of the Appellants as it is today and the same shall not be transferred nor be charged until the hearing and determination of the intended Appeal.



2. The Appellants shall remain on the suit land and in particular the space they occupy and which they have put up their home (s) and no more and they shall strictly confine themselves there.
 3. At the end of this year and after harvesting the current maize crop, the Appellants shall not cultivate the suit land any more and they will surrender it to the Respondent.
 4. The Appellants shall not cut any tree(s) on the suit land.
 5. Should the Appellants make it difficult for the Respondent to cultivate the suit land with effect from next year, 2026 or even cause any trouble to the Respondent, they will no longer enjoy Order No (2) above and they will be forthwith evicted with the help of the area O.C.S.
 6. The Appellants shall deposit in Court the sum of Kshs. 75,000/= as security for costs within the next 90 days failure to which this stay will automatically lapse.
7. These are the Orders of this Court

RULING DATED AND SIGNED AT NYANDARUA THIS 28TH DAY OF MAY, 2025.

HON MUGO KAMAU

JUDGE

In the presence of:

Court Assistant - Samson.

Ms. Olendo for the Appellants

Mr. Obore for the Respondent

