



Lasoi (Suing as the administrator of the Estate of the Late Solomon Kipkorir Arap Lasoi) & 2 others v Cheruiyot & 10 others (Environment & Land Case 472 of 2016 & 54 of 2020 (Consolidated)) [2025] KEELC 315 (KLR) (4 February 2025) (Ruling)

Neutral citation: [2025] KEELC 315 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 472 OF 2016 & 54 OF 2020 (CONSOLIDATED)
MAO ODENY, J
FEBRUARY 4, 2025

BETWEEN

DIANA LEE LASOI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE SOLOMON KIPKORIR ARAP LASOI) 1ST PLAINTIFF
LEA CHERONO SHABANGI 2ND PLAINTIFF

AND

JOHN KIPTOO CHERUIYOT 1ST DEFENDANT
PETER K CHERUIYOT 2ND DEFENDANT
COLLINS K CHEPKWONY 3RD DEFENDANT
JANE CHEPKORIR BARBARET 4TH DEFENDANT
CAREN CHEPKIRUI MUTAI 5TH DEFENDANT
CAROLINE CHEBET 6TH DEFENDANT
SAMWEL KIPNGETICH KITUR BETT 7TH DEFENDANT
THE COUNTY LANDS REGISTRAR NAKURU COUNTY 8TH DEFENDANT

AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 54 OF 2020

BETWEEN

CAROLINE CHEBET PLAINTIFF

AND

DIANA LEE LASOI 1ST DEFENDANT



LEA CHERONO SHABANGI 2ND DEFENDANT

LEONARD KIPNGETICH CHELULE 3RD DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 19th November, 2024 by the 2nd- 7th Defendants/Applicants seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the intended appeal, there be a stay of execution of the judgment and the decree of the court delivered and issued on 11th October, 2024.
 - d. That costs of this application to abide the outcome of the appeal.
2. The application was supported by the annexed affidavit of Peter Cheruiyot, the 2nd Defendant sworn on 19th November, 2024 here he deponed that the court delivered its judgment in this case on 11th October, 2024 in favour of the Plaintiffs and gave the defendants forty-five days to vacate the land or be evicted. The 2nd Defendant deponed that execution of the decree arising from the judgment was suspended for forty-five days however before its expiry, the Plaintiffs had already invaded the land and commenced cultivation.
3. He further deponed that he had filed a Notice of Appeal and that the application was made without delay. He also stated that they are ready to abide by any conditions as to security for due performance of the decree.
4. The 1st Plaintiff filed a Replying Affidavit sworn on 26th November 2024 where she deponed that at the time of the judgment, her servants were in occupation of 10 acres of the property while the Defendants were in occupation of 26 acres of the property. She deponed that from 2018, her servants have been cultivating the said 10 acres on her behalf and have harvested potatoes and wheat on the portion of the property.
5. The 1st Plaintiff further deponed that the Defendants were put on Notice of the court's judgment and upon receipt of the same, the 4th and 5th Defendants accelerated their activities on the property and went ahead to plant potatoes on portions of the property that they had not previously ploughed. She deponed that the application has been made in bad faith and should the same be granted, the Defendants should deposit an amount that would compensate her for damages quantified at Ksh 35,000,000/=. She deponed that the Defendants have not proved any triable issue in the appeal and they have not annexed any draft memorandum of appeal.

2nd-7th Defendant/Applicants' Submissions

6. Counsel for the 2nd – 7th Defendants filed submissions dated 13th December, 2024 and submitted that the intended appeal is the basis upon which the applicants have sought an order of stay of execution and if the same is not allowed, it will expose them to substantial loss.
7. It was counsel's submission that the appeal will thus be rendered an academic exercise and relied on Order 42 rule 6 of the Civil Procedure Rules and the cases of Mohammed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat (2013) eKLR, Kenya Tanzania Uganda Leasing vs Mukenya Ndunda &



another (2013) eKLR, RWW vs EKW (2019) eKLR, Masisi Mwita vs Damaris Wanjiku Njeri (2016) eKLR and Jamii Bora Bank Limited & another vs Samuel Wambugu Ndirangu. Counsel submitted that the requirement for security for the due performance of the decree is not meant to punish the applicant.

8. On whether the applicant has demonstrated substantial loss, counsel submitted that eviction from the parcel of land that the defendants have occupied for such a long period while the appeal is pending will certainly expose the applicants to substantial loss. Counsel relied on the case of Kivindu & another vs Musau & 4 others [2023] KECA 1015. Further, the applicant is ready to comply with the conditions on security for the due performance of the decree as may be imposed by the court.

Plaintiffs' Submissions

9. Counsel for the Plaintiffs filed submissions dated 14th December, 2024 and submitted that the applicants have not established any substantial loss that they will suffer. Further the 4th to 7th Defendants have not sworn any affidavit to show how the intended appeal will be rendered nugatory should they be evicted from the property and relied on the cases of Stanley Kangethe Kinyanjui vs Tony Ketter & 5 others [2013] eKLR and Masisi Mwita vs Damaris Wanjiku Njeri [2016] eKLR.
10. Counsel submitted that should the court make an order for the deposit of costs then it should take into consideration the earnings from the property and the estimated duration that the appeal is to be heard and multiply the earnings by that period to come up with the sufficient security for costs that should be granted.

Analysis and Determination

11. The issue for determination is whether the Applicants have met the threshold for grant of stay of execution pending Appeal. Applications for a stay of execution are guided by Order 42 Rule 6 of the Civil Procedure Rules provides as follows:

- “(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.”

12. The purpose of a stay of execution is to preserve the substratum of the case as was held in the case of Consolidated Marine. vs. Nampija & Another, Civil App.No.93 of 1989 (Nairobi), where the Court stated as follows:

“The purpose of the Application for stay of execution pending Appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of Appeal are safeguarded and the Appeal if successful is not rendered nugatory”

13. The first ingredient for issuance of stay is that the application must be filed timeously without unreasonable delay. The Judgment in this case was delivered on 11th October, 2024 while this application was filed on 19th November, 2024. Therefore, the Applicants have met the requirement of



timely filing of the application. In the case of Jaber Mohsen Ali & another v Priscillah Boit & another [2014] the court held as follows:

“The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”

14. The Applicants must prove that they will suffer substantial loss if the order is not granted. Proof of substantial loss is the cornerstone of applications for stay of execution and therefore an Applicant must go a step further to prove such loss and not merely state that he/she will suffer substantial loss.

15. In the case of Kenya Shell Limited vs. Kibiru [1986] KLR 410, it was held that:

“It is usually a good rule to see if Order XLI 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 corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money”.

16. It was the Respondents’ case that they would be evicted from the suit parcel of land which they have occupied for over ten years hence will expose them to substantial loss.

17. In the case of Kimani & 2 others v Akuisi Farmers Company Limited & another (Environment and Land Appeal E046 of 2023) [2024] KEELC 5474 (KLR) (25 July 2024) (Ruling) this court held that:

“The fact that there is imminent eviction is not proof of substantial loss as the parties were heard and an order for eviction ordered by the court. In granting stay of execution, the court must balance the rights of both the successful litigant and the aggrieved party who would wish to file an appeal. That is why there are hierarchy of courts and rights of appeal.”

18. In the case of Samvir Trustee Limited Vs Guardian Bank Limited Nairobi (Milimani) HCCC No. 795 of 1997 the Court held as follows:

“For the Applicant to obtain a stay of execution, it must satisfy the Court that substantial loss would result if no stay is granted. It is not enough to merely put forward mere assertions of substantial loss, there must be empirical or documentary evidence to support such contention. It means the Court will not consider assertions of substantial loss on the face value but the Court in exercising its discretion would be guided by adequate and proper evidence of substantial loss...”

19. The Applicant deponed that the court granted forty-five days period to vacate the suit parcel of land but the plaintiffs invaded the land before the expiry of the period. The Applicants also attached two photographs marked as PC-3 (a) and (b) a Notice of Appeal dated 18th October, 2024 is also attached to the Application marked as PC 2(a).

20. This court finds that the 2nd-7th Defendants/Applicants have shown the substantial loss that they will suffer if the stay of execution order is not granted.

21. On the issue of security, the 2nd-7th Defendants submitted that they are ready to comply with the conditions on security for the due performance of the decree as may be imposed by the court. They



also informed the court that the requirement for security for the due performance of the decree is not meant to punish the Applicant but to guarantee the performance of the decree.

22. In the case of Exclusive Mines Limited & another vs Ministry of Mining & 2 others [2015] eKLR, the court stated as follows:

“...On the issue of furnishing security, my understanding is that an applicant seeking an order of stay pending appeal should, as a sign of good faith, offer or propose any such security for the performance of the decree which the appeal has been preferred. I have looked at the Interested party’s affidavit in support of his Notice of Motion and nowhere in his seventeen (17) paragraph affidavit does he make any offer of any security nor bind himself to meet any such orders that the Court may impose. While the law leaves it to the Court’s discretion to make such orders as to security as it may deem fit, it is a good practice for an applicant seeking such an order to intimate to the Court his preparation to meet such orders as the Court may impose as this assists the Court while exercising its discretion in that respect.”

23. I have considered the application, the submissions by counsel and order that the Applicants do deposit Kshs. 300,000/= in a joint interest earning account of counsel on record for the Applicants and the Respondents within 30 days, failure to which the order lapses.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF FEBRUARY 2025.

M. A. ODENY

JUDGE

