



Sarich & another v Marigi & 4 others (Environment and Land Appeal E048 of 2024) [2025] KEELC 446 (KLR) (5 February 2025) (Ruling)

Neutral citation: [2025] KEELC 446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E048 OF 2024
MD MWANGI, J
FEBRUARY 5, 2025**

BETWEEN

SAMMY AREKAI SARICH 1ST APPELLANT

MARY JELAGAT SARICH 2ND APPELLANT

AND

PETER GATHIGI MARIGI 1ST RESPONDENT

JOAN NJERI KAGEMA 2ND RESPONDENT

JULIUS OKELLO WAMAYA 3RD RESPONDENT

DANIEL GICHURU MARIGI 4TH RESPONDENT

THE LAND REGISTRAR, KAJIADO NORTH 5TH RESPONDENT

RULING

(In respect of Appellant’s notice of Appellants’ Notice of Motion dated 10th December 2024 brought under Order 42 rule 6 of the Civil Procedure Rules and other provisions of the law seeking a stay of execution of the judgment and decree of the Magistrate’s court appealed from)

Background.

1. The Appellants in their application dated 10th December 2024 seek an order of stay of execution of the judgment and decree of the Magistrate’s Court appealed from. The Appellants aver that there is a high and probable likelihood that execution may issue at any time in the absence of stay of execution orders. The Appellants opine that they have an arguable case that raises serious triable issues hence the need to allow the determination of the appeal on merit, otherwise, execution will render the appeal nugatory. The Appellants further claim that they stand to suffer irreparable loss and or harm unless stay of execution is granted. Finally, that no prejudice whatsoever will be suffered by the Respondents.



2. The application is supported by the affidavit of Mary Jelagat Sarich which reiterates the grounds on the face of the application.
3. The Respondents despite being served did not respond to the Appellants' application under consideration.
4. The application was argued orally before the court on 3rd February 2025.

Issues for determination.

5. Having considered the application and the oral submissions by counsel for the Appellants/applicants, the sole issue for determination is whether the application merits issuance of an order of stay of execution pending appeal.

Analysis and determination.

6. Order 42 rule 6 (2) of the Civil Procedure Rules provides that an order of stay of execution shall not be made unless;-
 - a. The court is satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay; and
 - b. Such security as the court orders for the performance of such decree or order as may ultimately be binding on him has been given by the applicant.
7. From the clear reading of sub-rule 2(a) of rule 6, substantial loss is the key consideration in an application for stay of execution. I fully associate with the holding in the case of Jason Ngumba Kogu & 2 others –vs- Intra Africa Assurance Company Limited (2014) eKLR, where the court stated that;

“The possibility that substantial loss will occur if an order of stay of execution is not granted is the cornerstone of the jurisdiction of court in granting stay of execution pending appeal under order 42 rule 6 of the Civil Procedure Rules. The court arrives at a decision that substantial loss is likely to occur if stay is not made by performing a delicate balancing act between the right of the respondent to the fruits of his judgment and the right of the applicant on the prospects of his appeal. Even though many say that the test in the High Court is not that of “the appeal will be rendered nugatory”, the prospects of the Appellant to his appeal invariably entails that his appeal should not be rendered nugatory. The substantial loss therefore, will occur if there is a possibility that the appeal will be rendered nugatory. 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 be a pious explorer in the judicial process.”

8. The Appellants in their application and submissions affirmed that they stand to suffer substantial loss unless stay is granted. The application is not opposed. The Respondents in spite of service did not enter appearance.
9. I too note that the Appellants made this application without unreasonable delay.
10. The court is persuaded that the application by the Appellants merits the issuance of orders of stay of execution pending hearing of their appeal. The court does not consider it necessary for the Appellants to provide security since the record of appeal is already filed. The appeal will be determined without any further ado. I agree that no prejudice will be suffered by the Respondents.



11. Consequently, the application dated 10th December 2024 is hereby allowed as prayed. An order of stay of execution of the judgment and decree of Hon. Helen C. Maritim (Senior Resident Magistrate) delivered on 15th November 2024 in Ngong CMELC NO. E033 of 2021 is hereby issued pending the hearing and determination of the appeal before this court.

12. The costs of the application shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5TH DAY OF FEBRUARY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Bett for the Appellants/Applicants

N/A by the Respondents

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

