



**Kasigau Ranching (DA) Company Limited v Cabinet Secretary, Ministry of Petroleum & Mining & 3 others; Ngilorit (Interested Party) (Environment & Land Case E010 of 2024) [2025] KEELC 1035 (KLR) (Environment and Land) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1035 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND CASE E010 OF 2024  
EK WABWOTO, J  
MARCH 6, 2025  
(FORMERLY MSA ELC CIVIL SUIT NO. 159 OF 2019)**

**BETWEEN**

**KASIGAU RANCHING (DA) COMPANY LIMITED ..... PLAINTIFF**

**AND**

**THE CABINET SECRETARY, MINISTRY OF PETROLEUM & MINING ..... 1<sup>ST</sup> DEFENDANT**

**THE COMMISSIONER OF MINES AND GEOLOGY ..... 2<sup>ND</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**LILIAN MERCY MUTUA T/A LILIAN M. GEMS ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**ELIZABETH WANGECHI NGILORIT ..... INTERESTED PARTY**

**RULING**

1. This Ruling is in respect to the 4<sup>th</sup> Defendant/Applicant’s application dated 18<sup>th</sup> December 2024 seeking inter alia stay of execution of the judgment delivered on 2<sup>nd</sup> October 2024 and or issuance of status quo orders pertaining to the filing of the suit.
2. The application was supported by the affidavit sworn by Lilian Mercy Mutua on the even date and also the grounds made in support of the said application.



3. The application was opposed by the Plaintiff and the Interested Party. The Plaintiff filed a Replying Affidavit sworn by Allen Ngonda Mwakesi on the 12<sup>th</sup> February 2025 while the Interested Party filed grounds of opposition dated 11<sup>th</sup> February 2025.
4. The application was canvassed by way of oral submissions made by Counsel for the parties. Learned Counsel Mr. Ngonze submitted on behalf of the 4<sup>th</sup> Defendant/Applicant while Learned Counsel Mr. Getange submitted on behalf of the Plaintiff/Respondent while Learned Counsel Mr. Muthami made oral submissions on behalf of the Interested Party.
5. Learned Counsel Mr. Ngonze urged the court to allow the application and grant the reliefs sought for the reasons that the 4<sup>th</sup> Defendant/Applicant had met and demonstrated all the ingredients and or requirements for grant of such an application. It was submitted that the 4<sup>th</sup> Defendant/Applicant is aggrieved by the said judgment and she has already filed an appeal which is also her right to do so. Counsel also reiterated the averments that had been made by the deponent in support of the application.
6. Learned Counsel Mr. Muthami associated himself with the submissions made by Learned Counsel Mr. Getange. He also added that the Interested Party had filed grounds of opposition which was premised on the grounds that the standards and conditions set out under Order 42 Rule 6 of the Civil Procedure Rules had not been met and the court is being asked to sit on its own judgment.
7. The court has considered the application and the oral submissions made and the main issue for consideration is whether this application is merited to warrant this court grant the reliefs sought.
8. The issue of whether to grant stay pending appeal is a matter of discretion. This discretion is fettered by four conditions. First, an applicant must demonstrate that there is just cause to grant stay. Second, the Applicant has to demonstrate that he or she will suffer substantial loss should stay not be granted. Third, there has to be security provided for the due performance of the decree as may ultimately be binding upon the Applicant. Fourth, the application has to be brought without unreasonable delay.
9. The principles are further outlined under Order 42 Rule 6 (1) and (2) of the [\*Civil Procedure Rules\*](#), which provides:
  - “(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.”

10. A stay of execution under order 42 of the *Civil Procedure Rules* is an interim order to suspend the rights of one party who is aggrieved with the judgment of the trial; court or tribunal and wishes to exercise his or her right of appeal. Its main objective is to protect the substratum of the suit by delaying the execution process like attachment until the determination of the appeal. Being a discretionary remedy the applicant must demonstrate that he or she has approached the court of equity with clean hands as succinctly stated in the case of *Jajbhay v Cassim* 1939 AD 537-551 the court held on this maxim that: “All writers upon our law agree in this, no polluted hand shall touch the pure fountains of justice.”
11. The general principle of law is that the successful litigant in possession of a valid court judgement is entitled to the fruits of judgement unless there exist exceptional circumstances to deny him or her that right.
12. In considering an application for stay of execution I am guided by the case of *Butt vs Rent Restriction Tribunal Civil App No. NAI 6 of 1979* (Madan, Miller and Porter JJA) where the following guidelines were given:

“The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.

The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion a better remedy may become available to the applicant at the end of the proceedings. The court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements.”
13. The Applicant should not only state that she is likely to suffer substantial loss but must also prove that they will suffer loss. The Applicant bears the burden of proving that by refusal to grant stay of execution they stand to suffer substantial loss.
14. The mere filing of a Notice of Appeal does not automatically warrant the issuance of orders of stay of execution of the decree. In the present situation, the Applicant have annexed a notice, memorandum of appeal and equally the record of appeal filed at the Court of Appeal.
15. The Applicant contended inter alia that the Court directed them move out from the suit property within a period of 90 days from the date of judgment failure of which eviction to issue. It was submitted that she has a justifiable cause to prefer an appeal.
16. I note that if the Respondents were to execute the decree, it will indeed render the appeal nugatory as she would have been removed from the suit property. This is a case for grant of stay of execution pending appeal.
17. The Applicant has submitted on her willingness to offer security for costs and even deposed that they she is willing to comply with whatever terms of security that the court would direct.



18. In view of the foregoing and considering the need to balance the interests of all the parties herein, the following orders shall be issued:-
- i. An order staying the execution of the judgment and decree delivered on 2<sup>nd</sup> October 2024 is hereby granted pending the hearing and determination of the appeal on condition that the Applicant herein Lilian Mercy Mutua t/a Lilian M. Gems do deposit a sum of Kshs. 5,000,000/= as security in a joint interest earning account of the Plaintiffs and 4<sup>th</sup> Defendants Advocates within 30 days from today.
  - ii. Failure to comply with Order (i) above the stay so granted shall automatically lapse.
  - iii. Costs of the application to abide the outcome of the appeal.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Mr. Getange for the Plaintiff/Respondent.

Ms. Kimani for the 4<sup>th</sup> Defendant/Applicant.

N/A for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents

N/A for the Interested Party.

Court Assistant: Mary Ngoira.

