



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimeei v Kaipoi (Land Case Appeal E002 of 2025)  
[2025] KEELC 1101 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1101 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
LAND CASE APPEAL E002 OF 2025  
MN MWANYALE, J  
MARCH 6, 2025**

**BETWEEN**

**MENGOROKINI KIMEEI ..... APPLICANT**

**AND**

**LELIMO MICHAEL KAIPOI ..... DEFENDANT**

**RULING**

1. Upon consideration of the Application dated 14.02.2025 seeking stay of execution of the Judgment of Hon. C. Waswa delivered on 20.12.2024 in Kilgoris CME & L No. E021/2021 consolidated with E063/2021, and the Replying affidavit dated 21.01.2025.
2. Upon hearing of the oral arguments in support of the application by Mr. Miruka learned counsel for the Applicant on the one hand and Mr. Seriani Learned counsel for the Respondent on the other hand.
3. In their submissions in respect of their respective positions, Mr. Miruka for the Applicant submitted that:
  - i) the Appellant stays in the demised property to wit Transmara/Nkararo/803 for over 50 years since the adjudication period, yet the Respondent was the Registered owner,
  - ii) the Applicant has satisfied the conditions under order 42 Rule 6, by the filing the application without undue delay and has demonstrated that the Applicant will suffer substantial loss if orders are not granted and Appeal rendered nugatory.
4. He placed reliance in the decision in the case of RWW Vs. EKW (2019) eKLR for the proposition that the purpose of stay of execution is to preserve subject matter in dispute so that the Appellant exercising their Right of Appeal is not prejudice; and was willing to deposit Kshs.50,000/= as security. On the strength of the above submissions the Appellant/Applicant urged the court to allow his application.



5. “Not so” submits Mr. Seriani for the Respondent placing reliance on the Replying Affidavit deponed on 21.01.2015.
6. On loss the Respondent submits that he will suffer loss since he cannot enjoy the fruits of the Judgment yet the Applicant has another parcel of property known as Transmara/Nkararo/807, which Respondent has no enjoyment of his property.
7. That the Appeal has no chance of succession since the court relied on the decision of the Minister which was not challenged by way of Judicial Review.
8. The Respondent proposed security for costs of Kshs.500,000/= as the property was worthy about Kshs.1,000,000/= and that the Appellant had not demonstrated ability to pay costs. He acceded that a stay of execution could be granted if half of the decretal sum was deposited in court as he had been awarded Mesne profits of Kshs.12,000,000/= and in support he placed reliance in the decision in the case of Samir Trustees Limited and Mwaura Karuga. He urges the court to be persuaded by the Authorities.
9. In brief Rejoinder Mr. Miruka, submitted that the Appeal related to Nkararo/803 and not 807, and that no valuation had been done on the property.

### **Issues for Determination**

10. Having consideration the application, the affidavits in support and in opposition, the submissions by the parties, the court frames the issues for determination as to;
  - i. whether the application is merited and
  - ii. what orders ought to issue?

### **Analysis and Determination**

11. Turning to the conditions for grant of stay pending Appeal under order 42 Rule 6 of the Civil Procedure Rules firstly, the court asks, was the application file timeously? the Application herein was filed on 14<sup>th</sup> January 2025, the Memorandum of Appeal having been filed on 13<sup>th</sup> January 2025, and the Judgment appealed from having been delivered on 20<sup>th</sup> December 2024.
12. Thus, the application was filed within the 30 days allowed for an appeal to be lodged and it was thus filed timeously. The Applicant has passed the first conditions for grant of the stay.
13. On substantial loss, the Applicant has deponed and further submitted that he is in occupation of the suit property Transmara/Nkararo/803 though the same is registered in the Respondent’s name and submits that if the decree was to be executed then substantial loss would be occasioned.
14. Indeed, eviction of the Applicant before his Appeal is heard and determined would occasion substantial loss on the Applicant while no prejudice will be occasioned to the Respondent.
15. The Applicant has thus passed the conditions for grant of stay pending Appeal under Order 42 rule 6 and it is thus merited. Hence the answer to issue number 1 is that the application is merited and it is therefore allowed.
16. On issue no 2 as to what orders ought to issue, the court notes that the judgment appealed from and the resultant Decree are not monetary in nature but costs were granted to the Applicant. The Applicant has submitted willingness to deposit Kshs. 50,000 but the Respondent submitted for deposit of Kshs.



500,000/= basing the same on the value of kshs 1,000,000 for the property which the Applicant disputes there being no valuation report prepared and filed in court.

17. The Applicant is granted a stay of execution in respect of the Decree of the Lower court and he deposits Kshs 80,000 as security for the performance of the decree on the costs already awarded. The said security to be deposited in court within 21 days from today.

**DATED AND DELIVERED AT KILGORIS THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of

Mr. Miruka for the Applicant/ Appellant

Mr. Seriani for the Respondent

C/A Emmanuel/Slyvia

