



Kendi v Wagate & 2 others (Environment and Land Appeal E022 of 2024) [2025] KEELC 1140 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1140 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E022 OF 2024**

**LN MBUGUA, J
MARCH 5, 2025**

BETWEEN

FAITH KENDI APPELLANT

AND

ANASTASIA MUNYUTHA WAGATE 1ST RESPONDENT

SAMUEL KARANJA KANORO 2ND RESPONDENT

JAMES KABARITA NJOGU 3RD RESPONDENT

RULING

1. Before me is a notice of motion application dated 17.9.24 where the appellant is seeking an order of stay of execution of the judgment delivered on 22.8.2024 in NANYUKI MCELC NO.8 OF 2020. She contends that she was dissatisfied with the judgment which contains an eviction order requiring her to remove her structures within 30 days.
2. The application is opposed by the 1st respondent vide her replying affidavit dated 25.10.2024 where it is averred that the application does not meet the threshold for issuance of the orders sought as no security has been offered and that she stands to be prejudiced if the orders are granted.
3. The 2nd respondent is not opposing the application while the 3rd respondent did not respond to the same.
4. To grant or not to grant a stay of execution is the question for determination. In *Magnate Ventures v Simon Mutua Muatba & another* [2018] eKLR 2, the court stated that;

“Order 46 Rule 6 (2) of the Civil Procedure Rules, therefore provides that an applicant who is seeking a stay of execution pending appeal must demonstrate the following:

1. Substantial loss may result to the applicant unless the order was made;



2. The application was made without unreasonable delay; and
 3. 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”
5. A perusal of the judgment in question reveals that there is an order of eviction of the applicant. That means that the applicant stands to suffer substantial loss. The application was also filed timeously in less than a month from the date of delivery of the judgment.
6. In the circumstances, I allow the application in the following terms;
- i) That there shall be a stay of execution of the judgment dated 22.8.2024 on condition that (a) the applicant deposits the sum of Ksh 100 000 in court within 45 days from the date of this ruling and (b) the stay shall last for a period of 6 months.
 - ii) The costs of the application shall abide that outcome of the appeal.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 5TH DAY OF MARCH 2025
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

