



**Nkuen v Gitonga (Environment and Land Appeal E027 of 2024)
[2025] KEELC 1029 (KLR) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1029 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E027 OF 2024**

**LN MBUGUA, J
MARCH 4, 2025**

BETWEEN

ZIPPORAH NKUEN APPELLANT

AND

JOHN MBURU GITONGA RESPONDENT

RULING

1. Before me is the appellant’s notice of motion application dated 21/11/2024 seeking a stay of execution of the lower court judgment delivered on 2/10/2024 in CM ELC No. 26 of 2020.
2. The applicant/appellant who was the defendant in the lower court contends that she was dissatisfied with the said judgment and has duly filed a memorandum of appeal. She avers that she had been living on the suit property and she stands to suffer irreparable loss if she is evicted from the suit land.
3. In opposition thereof, the respondent who was the plaintiff in the lower court filed a replying affidavit dated 17/2/2025 where he contends that he is the legal owner of the suit plot and that the persistent occupation of the said land by the appellant contravenes his proprietary rights as enshrined in *the constitution* of Kenya.
4. At paragraph 7 of the replying affidavit the respondent avers that the application has been overtaken by events as he is now in occupation of the suit land pursuant to the court order.
5. To grant or not grant a stay of the execution of the lower court judgment is the issue for determination. To this end, the court makes reference to the provisions of Order 42 rule 6 of the Civil Procedure Rules. The court has discretion to grant or to refuse an application for stay of execution pending appeal whereby the court has to balance the interest of the protagonists. Halai & another v Thornton T Rupin (1963) Ltd (1990) eKLR.



6. A perusal of the record reveals that an order of stay of execution of the judgment was given by this court way back on 25/11/2024. The respondent has not given any tangible account as to how the application could have been overtaken by events yet there was an order for stay of execution. In that regard, and in order to expedite the matter. This court allows the application dated November 21, 2024 for a period running up to October 28, 2025 (a year from when the appeal was filed). The costs thereof shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 4TH DAY OF MARCH, 2025
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Ms. Wangu for Respondent

Chweya for Appellant

Court Assistant: Nancy Mwangi

