



**Muli & 2 others v Matolo & another (Environment and Land Appeal E005 of 2024) [2025] KEELC 3527 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3527 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND APPEAL E005 OF 2024**

**EO OBAGA, J**

**MAY 5, 2025**

**BETWEEN**

**PHILLIP MULI ..... 1<sup>ST</sup> APPELLANT**

**RACHAEL MUMBUA KITAKA ..... 2<sup>ND</sup> APPELLANT**

**MARTIN KIOKO ..... 3<sup>RD</sup> APPELLANT**

**AND**

**ROBERT MULI MATOLO ..... 1<sup>ST</sup> RESPONDENT**

**LAWRENCE MATOLO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of Notice of Motion dated 9<sup>th</sup> May, 2024 in which the AppellantsApplicants seek the following orders:

**Spent**

2. That pending the hearing and determination of this appeal, this honourable court do grant a stay of execution of the judgment in Makueni CMELC No. E032 of 2021 delivered on the 11<sup>th</sup> April, 2024 and all other consequential orders thereto.

**That the costs of this application be borne by the Respondents.**

2. The Applicants contend that they have preferred an appeal to this court from the judgment of Hon. P. N. Gesora Chief Magistrate delivered on 11<sup>th</sup> April, 2024. They state that if stay of execution is not granted, they will suffer substantial loss and this will render their appeal nugatory.



3. The Applicants state that they have been living on the suit property for many years and if they were to be evicted before the appeal is heard and determined, they will suffer loss which will render their appeal nugatory. They state that they are ready to offer security for costs as may be determined by the court.
4. The Applicants' application was opposed by the Respondents based on a replying affidavit sworn on 22<sup>nd</sup> May, 2024. The Respondents state that the Applicants' application is frivolous, vexatious, devoid of merit and is based on erroneous understanding of the law. They further state that the application is incapable of succeeding and violates the law in that the Applicants were initially represented by an advocate but have filed this application in person without filing a notice of intention to act in person.
5. The Respondents contend that the Applicants have not demonstrated that there is any threat of eviction and that they have not offered to deposit security for costs.
6. The parties were directed to dispose of the application by way of written submissions. The Applicants filed their submissions dated 20<sup>th</sup> January, 2025. The Respondents filed their submissions dated 14<sup>th</sup> January, 2025.
7. I have considered the Applicants' application, the opposition thereto by the Respondents, the submissions by the parties as well as the authorities cited. The only issue for determination is whether the Applicants have met the threshold for grant of stay pending appeal.
8. The principles which guide a court in considering an application for stay pending appeal are contained in Order 42 Rule 6 (2). Firstly, an Applicant must bring the application without unreasonable delay. Secondly, there must be demonstration that absent stay, the Applicant will suffer substantial loss. Thirdly, there has to be security for costs given as may ultimately be binding upon the Applicant on the decree.
9. In the instant case, the impugned judgment was delivered on 11<sup>th</sup> April, 2024. The court which delivered the judgement gave an informal stay of execution for 30 days. The present application was filed on 9<sup>th</sup> May, 2024. I therefore find that the application was filed without unreasonable delay.
10. On whether the Applicants have demonstrated that they will suffer substantial loss absent stay, it is not disputed that the Applicants have been on the suit property for many years. From the evidence on record, they have been on the suit property at least from 1998. They have their houses there. If their houses were to be demolished and they are evicted, this will cause them substantial loss and render the appeal nugatory.
11. In the case of Joseph Simiyu Mukenya –vs- Agnes Naliaka Cheseto, Bungoma High Court Misc Application No. 42 of 2011 it was held as follows:

“.....the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
12. In the case of Leonard Awori –vs- Patrick Ochieng (2021) eKLR it was held as follows:

“The purpose of an order for stay of execution pending appeal is to preserve the subject matter of the appeal. If the subject is not maintained before the determination of the appeal, then it would render the appeal nugatory or an academic exercise.”
13. The Applicants have demonstrated that they will suffer substantial loss if stay of execution is not granted. They have also offered to deposit security for costs. I therefore find that their application is



well merited. It is allowed in terms of prayer 2 and 3. The Applicants shall deposit a combined figure for security for costs in court in the sum of Kshs.100,000 within 30 days failing which the stay shall automatically lapse without any further recourse to court.

It is so ordered.

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**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 5<sup>TH</sup> DAY OF MAY, 2025.**

In The Presence Of:

Mr. Odoyo fro Appellant/Applicant.

Mr. Kithuka for Respondent.

Court assistant – Steve Musyoki

