



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wainaina v Karongo (Environment and Land Appeal  
E005 of 2025) [2025] KEELC 3619 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3619 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E005 OF 2025**

**JM ONYANGO, J**

**MAY 5, 2025**

**BETWEEN**

**MICHAEL WAMUONGO WAINAINA ..... APPELLANT**

**AND**

**WAMUONGO KARONGO ..... RESPONDENT**

**RULING**

1. The Applicant, approached this court vide a Notice of Motion application dated 17<sup>th</sup> January 2025 seeking the following Orders:
  1. Spent.
  2. That a temporary injunction and/or stay of execution of the trial court's judgment do issue restraining the Respondent either by himself, his agents or representatives from alienating, selling, charging, mortgaging, leasing, entering, taking possession, erecting structures or in any way whatsoever interfering with the Suit Property [plot number Ruiru/Kiu Block 13/337 (Mwiki)], pending the interpartes hearing and determination of this application.
  3. That a temporary injunction and/or stay of execution of the trial court's judgment do issue restraining the Respondent either by himself, his agents or representatives from alienating, selling, charging, mortgaging, leasing, entering, taking possession, erecting structures or in any way whatsoever interfering with the Suit Property [plot number Ruiru/Kiu Block 13/337 (Mwiki)], pending the interpartes hearing and determination of the Appeal.
  4. That this Honourable Court be pleased to enjoin the Land Registrar Ruiru as a party to the suit.



5. That this Honourable Court be pleased to grant an order in the nature of a certiorari to the Land Registrar Ruiru for the purposes of quashing any decision of cancelling/ revoking and or rectification of the title deed for land parcel number Ruiru/Kiu Block 13/337 (Mwiki).
  6. That this Honourable court be pleased to grant an order compelling the Land Registrar to restore in the Land Register and all other relevant documents held at Ruiru Land Registry, the Appellant as the administrator, registered and absolute proprietor of the title to land parcel number Ruiru/ Kiu Block 13/337 (Mwiki) in respect of the Estate of George Wainaina Wamuongo (Deceased) and removing all the restrictions placed on the suit property by the 1<sup>st</sup> Respondent.
  7. That costs of this application be in the Appeal.
2. The Application is anchored upon the affidavit of one Michael Wamuongo Wainaina sworn on the same date as the motion wherein the factual substratum and grounds for the relief sought are set forth.
  3. The Application did not pass unchallenged. It was met with firm and unyielding resistance in the form of replying affidavit of one Wamuongo Karongo sworn on 4<sup>th</sup> February 2025; a document marked by its vehemence and determination to see the judgment enforced without delay.
  4. In the wake of the Respondent’s spirited opposition, the Applicant deemed it necessary to clarify and reinforce his position, and thus filed a Further Affidavit sworn on 24<sup>th</sup> February 2025.
  5. The Application was canvassed by way of written submission with each party duly filing their respective submissions.
  6. Having perused the application, the replying affidavit in opposition, and the parties written submissions the following key issue emerges for determination:

Whether the Applicant has established cause to warrant a stay of execution pending an appeal

### **Analysis and Determination**

7. The power to grant a stay of execution is not exercised lightly; it is a judicial discretion, not given as a matter of course, but reserved for those instances where swift enforcement of judgment threatens to undermine the very justice the Court is duty-bound to uphold.
8. The legal framework governing the grant of stay of execution pending appeal is firmly rooted in the Civil Procedure Rules, specifically Order 42 Rule 6(1) and (2). These provisions embody the delicate balance the Court must strike between the right of a successful litigant to enjoy the fruits of judgment and the right of the unsuccessful party to pursue an appeal without suffering irreversible harm. The Rule provides as follows:

“6. (1)No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 referred may apply to the appellate court to have such order set aside.



- (2) No order for stay of execution shall be made under subrule (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.”
9. These provisions serve not only as the statutory compass for the Court’s discretion, but as a guardrail to ensure that such discretion is exercised judiciously, with fairness to both parties and fidelity to the overarching cause of justice.
10. From the foregoing, it is clear that three core considerations anchor the Court’s discretion in applications for stay of execution. First, the Applicant must demonstrate that they stand to suffer substantial loss if the order is denied; loss that is real, imminent, and incapable of being remedied should the appeal succeed. Second, the Application must be brought without unreasonable delay, for the law does not reward indolence, even in pursuit of justice. Third, the Applicant must either furnish or show willingness to furnish security for the due performance of the decree; recognising that equity demands a balance, not a burden, upon the opposing party.
11. These considerations, though couched in procedural language, are ultimately aimed at preserving the integrity of the appellate process while respecting the finality of judgments.
12. Learned counsel for the Applicant submits that it is the obligation of the court to preserve the subject of the suit. To buttress his argument, he placed reliance on various authorities: *Shivabhai Nathabhai Patel v Manibhai Nathibhai Patel* [1959] EA 907, *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR.
13. In his submissions, the Applicant addressed all the key considerations that must be met before a court can exercise its discretion to grant a stay of execution.
14. On the question of substantial loss, the Applicant submits that, he together with his siblings, have lived on the suit property for over two decades. He submits that, absent a stay of execution, they face the grim prospect of forcible eviction, an act that would strip them not only of a roof but of refuge, rendering them homeless, with no viable alternative dwelling.
15. Secondly, the Applicant asserts that this Application was filed with promptitude and without the stain of undue delay. He underscores that immediately upon delivery of the impugned judgment, he moved the Court with reasonable dispatch, a reflection of both diligence and the urgency with which the matter impresses upon his circumstances. In doing so, the Applicant seeks to demonstrate that he has not slept on his rights, but has approached the Court in good faith and in timely pursuit of relief.
16. On the matter of security for costs, the Applicant submits that he is currently facing significant financial constraints. He respectfully acknowledges the Court’s requirement for such security, but underscores that his financial circumstances are such that requiring him to provide the full security could impose an undue hardship. The Applicant therefore seeks the Court’s understanding and discretion in this regard, assuring the Court of his genuine intent to comply with any reasonable conditions it may deem fit to impose, without further exacerbating his financial plight.
17. In response to the Applicant’s position, learned counsel for the Respondent contends that the Applicant has failed to meet the requisite threshold necessary to warrant the grant of a stay of execution.



He further argues that the Applicant's failure to make a firm commitment regarding the provision of security for the due performance of the decree renders the application fundamentally flawed; lacking in substance, procedurally defective, and devoid of merit. According to the Respondent, this omission strips the application of any foundation, rendering it unworthy of consideration.

18. To buttress his submissions learned counsel for the respondent placed reliance on the following authorities: *Machira t/a Machira & Co. Advocates v East African Standard* [2002] eKLR, *Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others* [2014] eKLR.
19. In my view, the Applicant has successfully established two key considerations set out in Order 42 Rule 6(1) and (2) of the Civil Procedure Rules. First, he has convincingly shown that he stands to suffer substantial loss should the execution proceed, a loss that cannot be adequately remedied in the event of a successful appeal. Second, the Applicant has demonstrated that this Application was filed within a reasonable timeframe; less than a month after the delivery of the impugned judgment, thus dispelling any notion of undue delay. The critical issue now, however, is the provision of security for costs.
20. The concept of security for costs was aptly addressed in *Arun C Sharma vs. Ashana Raikundalia t/a Rairundalia & Co. Advocates* [2014] eKLR where the court stated:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor...Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.”
21. Essentially, the purpose of requiring security is to guarantee the due performance of any decree or order that may ultimately be binding on the Applicant. In matters involving land, such security takes on an additional significance, serving not only as a safeguard for the performance of the decree but also as a means to preserve the subject matter of the dispute while the appeal is pending.
22. In exercising my discretion, I am tasked with balancing the interests of both parties: the Applicant's right to pursue their appeal without having it rendered nugatory by the disposal or interference with the subject matter, and the Respondent's right to enjoy the benefits of the judgment that has been in their favour.
23. In the instant Application, I have taken into account both the preservation of the Applicant's right to appeal and the Respondent's entitlement to the fruits of their judgment.
24. In the circumstances before me, and having carefully considered the parties' spirited arguments, I am inclined to grant the stay of execution sought by the Applicant, recognizing the importance of preserving the integrity of the appellate process. However, I am also mindful of the need to protect the Respondent's interests, ensuring that they are not unduly deprived of the fruits of their judgment.
25. Consequently, while I am persuaded that a stay is warranted, I find it necessary to also order the Applicant to deposit security for costs. This security will serve to safeguard the Respondent's right to enjoy the eventual fruits of the judgment, should the appeal not succeed, and to maintain the balance of justice between the parties during the pendency of the appeal.
26. The amount of security is a matter of judicial discretion, to be exercised with due regard to the circumstances of each case. Weighing the Applicant's financial constraints against the Respondent's right, I am satisfied that a deposit of Kshs. 100,000/= strikes a fair and reasonable balance.



27. Accordingly, I hereby grant the stay of execution on the condition that the Applicant deposits Ksh. 100,000/- as security for costs within thirty (30) days of this ruling and to file the Record of Appeal within 45 days, failing which the order for stay shall automatically lapse.

28. The costs shall abide by the outcome of the appeal.

It is so ordered.

**DATED, SIGNED AND DELIVERED, AT THIKA THIS 5<sup>TH</sup> DAY OF MAY 2025**

**J. M. ONYANGO**

**JUDGE**

