



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gobe v Bora (Environment and Land Appeal E005 of 2023)  
[2025] KEELC 4347 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4347 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND APPEAL E005 OF 2023**

**JO MBOYA, J**

**JUNE 4, 2025**

**BETWEEN**

**ALI GOBE ..... APPELLANT**

**AND**

**MOHAMMED GOLICHA BORA ..... RESPONDENT**

**RULING**

1. The Applicant [whose is the Appellant in the main Appeal] filed the application dated 19<sup>th</sup> May 2025 and wherein the Appellant has sought the following reliefs:-
  - i. That this application be certified urgent and be heard on a priority basis in view of its extremely urgent nature and service of the same be dispensed with in the first instance.
  - ii. That this Honourable Court be pleased to order the immediate released of the sum of Kshs. 600,000/= deposited in court as security by the Applicant to the Appellant's advocate on record.
  - iii. That this Honourable court be pleased to issue any other order it deems fit and just to grant in the circumstances.
  - iv. That costs of this application be provided for.
2. The instant application is premised on various ground which have been highlighted on the face thereof. Furthermore, the application is supported by the affidavit of the appellant[deponent] sworn on 19<sup>th</sup> May 2025. Moreover, the deponent has averred that upon lodging the appeal same[appellant] filed an application for stay of execution of the judgment of the subordinate court and which application was heard and disposed of vide ruling rendered on the 11<sup>th</sup> December 2023.
3. Additionally, it was averred that the court proceeded to and granted a conditional stay. In particular, the deponent stated that the court decreed provision of security vide deposit of the same of Ksh[s]



- 600,000/= Only in court. Besides it was averred that the appellant duly complied with the order for provision of security.
4. The Respondent herein was duly served with the application under reference. Nevertheless, the Respondent did not file any response to the said application. For good measure, no replying affidavit or grounds of opposition was filed.
  5. The instant application came up for hearing on 4<sup>th</sup> June 2025 whereupon the advocate[s] for the parties covenanted to canvass and dispose the application vide oral submissions. Furthermore, the advocates covenanted to dispose of the application simultaneously with the application dated 16<sup>th</sup> April 2025, the later which was filed by the Respondent and which sought review of the judgment of the court.
  6. The appellant/applicant adopted the grounds at the foot of the application and thereafter reiterated the averments in the body of the supporting affidavit. In addition, the applicant raised and canvassed two issues, namely; the applicant was directed to provide security and same duly complied; and the security under reference was to subsist pending the hearing and determination of the appeal.
  7. Regarding the first issue, learned counsel for the Appellant/applicant submitted that the applicant herein duly complied with the limb of the order of the court which directed provision of security. Moreover, it was submitted that the appellant/applicant proceeded to and deposited the sum of Kshs. 600,000/=Only in court. In any event it was posited that the deposit under reference was duly acknowledged and received by the court.
  8. Regarding the second issue, learned counsel for the appellant applicant has submitted that the provision of security was to subsist pending the hearing and determination of the appeal. To this end, it was submitted that the appeal before hand has since been heard and disposed of by judgment entered on 7<sup>th</sup> April 2025; whereupon the appeal was allowed.
  9. To the extent that the appeal has since been heard and concluded, learned counsel for the applicant has submitted that the event which underpinned the provision for security has since occurred and or accrued. In this regard, learned counsel posited that the security has since served its purpose and hence same [security] ought to be released to the appellant.
  10. Flowing from the forgoing, learned counsel for the appellant thus contended that the application beforehand is meritorious and thus ought to be allowed. To this end, counsel implored the court to grant the relief[s] sought.
  11. Though the Respondent did not file any response to the application, learned counsel for the respondent submitted that the Respondent herein has since filed an application seeking review of the judgment. To this end, learned counsel invited the attention of the court to the application dated. 16<sup>th</sup> April 2025.
  12. Furthermore, learned counsel submitted that in the event the application dated 16<sup>th</sup> April 2025 was to be allowed, then the net effect would be that the appeal would stand reinstated for further hearing by the court. In this regard, counsel submitted that it would be apposite to dispose of the application for review.
  13. On the contrary, learned counsel submitted that in the event the application for review fail[s] then it is automatic that the security ought to be released. Consequently, and in this regard learned counsel contended that the refusal of the application for review [if at all] will automatically precipitate the release of the security.



14. Having appraised the application beforehand, and upon consideration of the submissions by the advocates for the parties, I come to the conclusion that the determination of the subject application stands on two [2] salient issues, namely; whether the event that was underpinned by the security has arisen and or occurred; and whether sufficient cause has been established to warrant release of the security or otherwise.
15. Regarding the first issue, it is imperative to underscore that upon the filing of the instant appeal, the appellant also mounted an application for stay of execution of the judgment. Suffice to state that the application under reference was duly heard and disposed of by a ruling rendered on 11<sup>th</sup> December 2023.
16. Additionally, it is important to highlight that the court allowed the application for stay and thereafter directed provision of security. To this end, the appellant was ordered and directed to provide security by depositing the sum of Ksh[s]. 600,000/= in court. For good measure, the deposit of security was to subsist until the hearing and determination of the appeal.
17. From the terms of the ruling of the court rendered on the 11<sup>th</sup> December 2023, it is crystal clear that the deposit on account of security was to subsist pending the hearing and determination of the appeal. In this regard, it means that the deposit vide security was to stand discharged upon the determination of the appeal.
18. Put differently, the deposit on account of security was conditional to the determination of the appeal. To this end, the event that was being secured was the appeal and that the moment the appeal was disposed of, then the order for security lapsed and or became extinguished.
19. Arising from the forgoing, it is my finding and holding that the determination and disposal of the appeal beforehand provided a basis for the release of the deposit on account of security.
20. As pertains to the second issue, it is important to highlight that the security that was deposited can only continue to be retained by the court if and only if there is sufficient basis and or cause to warrant such retainer. In the regard, any decision to continue holding the deposit must be underpinned by a lawful cause and not otherwise.
21. The Respondent contended that same have since filed an application for review of the Judgment. Nevertheless, there is no gainsaying that the filing of an application for review by and of itself does not constitute and order for review. Suffice to state that such application shall have to be heard and disposed of one way or the other.
22. Moreover, it is not lost on the court that the order granting stay which underpins the provision of security did not reference and or anticipate an application for review. Simply put, the order granting stay was tied to and conditional to the hearing and determination of the appeal. It then means that the moment the appeal was determined and disposed of, one way or the other, the security became available for release, subject to the order of the court.
23. On the other hand, it is also worthy to underscore that the advocate for the parties had agreed to canvass the application for review dated 16<sup>th</sup> April 2025 and the current application simultaneously. Furthermore, I am privy to and knowledgeable of the fact that a separate ruling has been crafted as pertains to the application for review. For good measure, the court has found that the application for review is bereft of merit.



24. Arising from the forgoing, what becomes apparent is that even the application for review which was being referenced by the Respondent has since been determined and or disposed of. Instructively, same has been dismissed vide a separate Ruling rendered on even date.
25. In the premises, it is therefore evident that there is no legal basis or obstacle to bar the release of the deposit vide security. On the contrary, there exist[s] sufficient cause and basis to warrant the release of the security to the appellant.
26. Moreover, what constitute[s] sufficient cause was elaborated upon and highlighted in the case of Wachira Karani v Bildad Wachira [2016] KEHC 6334 (KLR). In this regard, I opine that the Applicant has met the requisite ingredient[s] underpinning sufficient cause.

**Final Disposition:**

27. Having analysed the two [2] thematic issues highlighted in the body of the ruling, it must have become apparent that the Applicant/ Appellant has duly established a basis to warrant the grant of the order[s] sought at the foot of the application beforehand.
28. Consequently, and in the premises the final order[s] of the court are as hereunder:
  - i. The Application dated 19<sup>th</sup> May 2025; be and is hereby allowed .
  - ii. The Security in the sum of Ksh[s] 600,000/= Only which was deposited on the basis of the ruling of the court rendered on the 11<sup>th</sup> December 2023 be and is hereby released to the Appellant/ Applicant[depositor] or the advocate for the Appellant for onward transmission to the Appellant.
  - iii. Each Party bear own cost of the Application.
29. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 4TH DAY OF JUNE 2025**

**OGUTTU MBOYA, FCI Arb; CPM [MTI].**

**JUDGE**

In the presence of:

Ms Mukami- Court Assistant.

Ms Alexandra Akinyi holding brief for Mr Yusuf for the Appellant/ Applicant

Mr. Owade for the Respondent.

