



**Moseti v County Government of Kisii & others (Environment and Land  
Case 111 of 2015) [2025] KEELC 4336 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4336 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND CASE 111 OF 2015**

**M SILA, J**

**JUNE 4, 2025**

**BETWEEN**

**ALLOYS MATAYA MOSETI ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KISII & OTHERS ..... DEFENDANT**

**RULING**

(Application for stay of execution pending appeal; application allowed subject to deposit of Kshs. 3,000,000/= as security)

1. The application before me is that dated 11 February 2025 filed by the unsuccessful plaintiff. It is an application seeking stay of execution of the judgment and decree herein, pending hearing and determination of an appeal that he has preferred before the Court of Appeal. The application is opposed.
2. To put matters into context, through a plaint filed on 24 March 2015, the applicant averred to be the lawful proprietor of the land parcel Kisii Municipality/Block III/566 (the suit land). At the time that he filed suit, he was developing a hotel on the suit land and in fact filed suit for reason that the respondents were stopping the same, on the claim that the applicant has no good title to the suit land, and further that the suit land falls under a riparian area. The respondents filed defence and counterclaim raising the same issue i.e that the applicant has no good title and that the suit land is on riparian land. They also complained that the applicant was illegally constructing on the suit land despite orders of status quo having been issued on 22 October 2015. In the counterclaim, they inter alia sought orders to have the applicant evicted from the suit land and to have the structures he has put up demolished.
3. I heard the case and delivered judgment on 4 February 2025. I was not persuaded that the applicant had any good title to the suit land. I held that his purported title was a fraud. In essence I dismissed his suit with costs. On the counterclaim, inter alia, I did find that the applicant had in the course of



trial, and despite the order of status quo, proceeded to develop a hotel on the suit land. I gave 21 days for the applicant to demolish the structure and restore the premises in the manner that he found it. Aggrieved, the applicant filed a Notice of Appeal and has now followed the same with this application. In the supporting affidavit, he has inter alia averred that he has made massive developments on the plot.

4. The respondents have opposed the motion through the replying affidavit of Anne Githinji. She avers that the applicant has not demonstrated any grounds that the appeal will succeed. She has added that based on the evidence presented the applicant had no liberty to develop the plot while being aware of the dispute. She has urged that the respondent is the County Government and able to compensate the applicant in the unlikely event that he succeeds on appeal.
5. I have considered the application. It is one for stay pending appeal and I stand guided by the principles laid out in Order 42 Rule 6 (2) of the *Civil Procedure Rules*, which provides as follows :

Stay in case of appeal [Order 42, rule 6.]

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 preferred 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.
6. From the above, it will be discerned that indeed, an unsuccessful party is at liberty to seek a stay pending appeal on satisfying certain conditions. The conditions are as follows :
    - i. That the application has been made without unreasonable delay;
    - ii. That the applicant satisfies that he stands to suffer substantial loss unless stay is granted;
    - iii. That there is security for performance of the decree.
  7. Looking at these principles, I am persuaded that the application has been filed without unreasonable delay. It was indeed filed barely a week after the judgment. On substantial loss, it is clear that the appellant stands to suffer substantial loss if the judgment is executed. Part of the judgment will involve him demolishing the structures on the suit land. I appreciate the contention of the respondent that in granting stay there is danger that the public will be denied the benefit of using the suit land and that it will not be in the public interest to grant stay. I also appreciate the argument that the County Government is capable of compensating the applicant for any loss he may suffer. However, I do not think we can close our eyes to the fact that if the premises is demolished and the Court of Appeal allows



the appeal, there will be substantial loss to the applicant. I would think that given the nature of the case, and the potential public interest at stake, either the applicant or the respondent, need to move the Court of Appeal to decide the case on priority basis. But it is clear that the applicant stands to suffer substantial loss if the judgment is executed and his appeal is allowed.

8. The last item is security. Of course I found that the applicant undertook developments despite an order of status quo. Part of the argument of the applicant, within this application, is that because he has made these developments then he ought to be granted stay. Where I stand, I feel that this is akin to a situation where one pleads in mitigation that he is an orphan when convicted of the murder of his parents. In my discretion, I will grant stay but order the applicant to deposit security in the sum of Kshs. 3 million within the next 60 days. This amount be deposited either in court or in a joint interest earning account as the applicant may elect. This deposit can cover any expenses of demolition and/or minimize any illegitimate gains that may accrue to the applicant by his continuous presence in the suit premises, in the event that his appeal fails. In default of depositing the above monies as directed, the respondents are at liberty to execute the judgment.
9. In the event that the applicant complies with the above, the costs of the application will abide the outcome of the appeal. If he fails, then the application will stand dismissed with costs.
10. Orders accordingly.

**DATED AND DELIVERED THIS 4<sup>TH</sup> DAY OF JUNE 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Ms. Bosire for the applicant

Ms. Bonareri for the respondent

Court Assistant : Michael Oyuko

