



REPUBLIC OF KENYA



KENYA LAW
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**Rop & another v Khaoya & 3 others (Environment & Land Case
46 of 2011) [2025] KEELC 4387 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4387 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 46 OF 2011**

**CK NZILI, J
JUNE 10, 2025**

BETWEEN

SAMUEL KIPTOO ROP 1ST PLAINTIFF

MOSES KIBIWOTT 2ND PLAINTIFF

AND

BEATRICE NAKHUMINCHA KHAOYA 1ST DEFENDANT

PATRICK KOOKOO KALENDA 2ND DEFENDANT

DISTRICT LAND REGISTRAR TRANS-NZOIA COUNTY 3RD DEFENDANT

HENRY MUTAMBO WEPHUKHULU 4TH DEFENDANT

RULING

1. Before the court is an application dated 31/1/2025, brought under Order 42 Rule 6 of the Civil Procedure Rules. The applicants seek for stay of execution of the judgment delivered on 23/9/2024, pending the appeal. The grounds in support are on the face of the application and in the affidavit of Moses Limo, sworn on 27/12/2024. The applicants aver that the appeal raises serious triable issues with high chances of success. Further, that suit land risks being disposed of by the 1st respondent who holds a contentious title; the appeal will be rendered nugatory; the 4th respondent denied selling the suit land to the 1st respondent.
2. The applicants aver that a notice of appeal annexed as SKR “1” was filed on 9/10/2021; a request of typed proceedings as SKR “2” and that the applicants stand to suffer substantial loss if the orders sought are not granted and the appeal succeeds.
3. In opposition, the 1st respondent, through her affidavit of 11/2/2025 avers that together with the 2nd respondent, they are the registered owners of the suit land by dint of Section 26 of the [Land Registration Act](#); the applicants shall not suffer any substantial loss or irreparable damage if the orders



are not granted. Again, the 1st respondent avers that the applicants have not met the conditions for grant of stay orders since they have neither demonstrated that substantial loss shall ensue nor have they furnished any security.

4. The 1st respondent further avers that there was a counterclaim and therefore, no decree is for execution since the suit was dismissed. Again, the 1st respondent avers that in the event the orders are granted, the applicants should be ordered to provide security of Kshs.1,000,000/=.
5. Having carefully considered the application and replying affidavit, the only issue arising for determination is whether this court should grant a stay of execution of the judgment delivered on 23/9/2024. Stay of execution is provided under Order 42 Rule 6 of the Civil Procedure Rules. An applicant must show that substantial loss may result unless the order is made; the application must be made without unreasonable delay and lastly, security for the due performance of the decree must be availed.
6. In *Butt -vs- Rent Restriction Tribunal* [1979], the Court of Appeal observed that the grant or denial of stay orders is at the discretion of the court, which discretion the court should exercise in such a way as to prevent an appeal from being rendered nugatory; stay orders should not be denied because better remedies exist and a court must consider the special circumstances and order for security for costs. The court also held that failure to provide the security as ordered, may result in a lapse of the stay orders.
7. On undue delay, the judgment was entered on 23/9/2024. The notice of appeal and this application were simultaneously filed on 3//2025. The delay is for about four months, which the applicants have not sufficiently explained. The same is found to be unreasonable.
8. Substantial loss is a qualitative concept rather than a mathematical formula, one that is of real value and not merely nominal as held by Ogolla J, in *Tropical Commodities Suppliers Ltd & Others -vs- International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331. In *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* [2012] eKLR, the court held that execution is a lawful process and does not by itself amount to substantial loss.
9. An applicant must demonstrate how an execution will create a state of affairs that will irreparably affect or negate the very essential core of it as the successful party in the appeal. See also *Century Oil Trading Company Ltd -vs- Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007*. The applicants have not shown or demonstrated how they are likely to suffer if stay orders are not granted. They equally do not allege possession or occupation of the suit land. Mere apprehension of the respondents disposing of the suit land does not amount to substantial loss, without cogent evidence.
10. A court while determining a stay must also consider the overriding objectives and balance the interests of the parties to the suit, while considering the issue of security to be offered. There is no valuation report attached to show the value of the suit land for the court to determine the security for costs that would be adequate. See *Nduhiu Gitahi -vs- Warugongo* [1988] KLR 621; 1 KAR 100; [1988-92] 2 KAR 100.
11. The applicants' suit was dismissed and no orders were given for execution. Therefore, since the applicants have already filed the appeal, the merits and demerits of the decision shall be determined by the Court of Appeal and not this court.
12. Given the foregoing, the applicants have, in totality, not met the conditions to warrant grant of stay orders. The application is thus dismissed for want of merits with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 10TH DAY OF JUNE 2025



In the presence of:

Court Assistant - Dennis

Ingosi for 1st defendant present

Wanyonyi for 2nd defendant present

Gemenet for plaintiff present

HON. C.K. NZILI

JUDGE, ELC KITALE

