



**Gitari v Gitari (Environment and Land Appeal E007 of 2024)  
[2025] KEELC 5101 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5101 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT AND LAND APPEAL E007 OF 2024**

**LN MBUGUA, J**

**JULY 9, 2025**

**BETWEEN**

**JACINTA MUTHONI GITARI ..... APPELLANT**

**AND**

**MARY MUTHONI GITARI ..... RESPONDENT**

**RULING**

1. Before me is a notice of motion application dated 5.12.2024 in which the appellant prays for a stay of execution of the judgment of Hon Kithinji CM delivered on 27.3.2024 in Nanyuki MCLE NO.11 OF 2019. In her supporting affidavit, the appellant avers that she was the plaintiff in the original suit where she was claiming ownership of parcel Euasonyiro/Sururol Block IV/148, that her family never authorized the respondents to occupy the suit land, and that she has occupied the land long enough to assert a claim for adverse possession. She contends that the appeal may be rendered nugatory if the orders sought are not granted.
2. In opposition thereof, the respondent filed a replying affidavit dated 20.5.2025 where she avers that the appellant was the plaintiff and she did not prove her case before the trial court, adding that judgment was delivered more than a year ago, thus the delay is creating anxiety.
3. On 14.5.2025, the court gave directions on filing of submissions, but there was no compliance with the said directions.
4. Firstly, I find that the appellant has not availed the judgment in question to enable this court to discern the nature of the claims of the parties and the decision of the trial court. In absence of this important primary document, the application must collapse.
5. Secondly, I find that the appellant admits that she was the plaintiff before the trial court. Her case did not succeed, hence this appeal. In that regard, what is there to be stayed?



6. It is trite law that stay orders can only be issued in respect of positive orders. In *Western College Of Arts and Applied Sciences Vs Oranga & Others* [1976] Klr 63, cited in *Lucia Abaja Otieno & 2 others v Filgona Omogo Okoth* [2018] eKLR the Court of Appeal whilst considering whether an order of stay can be granted in respect of a negative order stated thus:-

“But what is there to be executed under the judgment, the subject of the intended appeal the High Court has merely dismissed the suit with costs. An execution can only be in respect of costs.....

The High Court has not ordered any of the parties to do anything or to refrain from doing anything or to pay any sum. There is nothing arising out of the High Court Judgment for this court in an application for stay to enforce or restrain by injunction.”

7. Similarly in the case at hand, the judgment of the trial court seems to have given rise to negative orders seeing that plaintiff's claim did not succeed. In that regard, I find that the application dated 5.12.2024 is not merited, the same is hereby dismissed with costs to the respondent. The appellant should hasten to prosecute her appeal.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 9<sup>TH</sup> DAY OF JULY 2025 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Nanjala H/B for Ombongi for appellant

