



Jumaa & another (Suing as the Personal Representative of the Estate of Patrick Kwesha Dzombo (Deceased)) v Sanga & 2 others (Environment and Land Case Civil Suit 166 of 2014) [2025] KEELC 4982 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4982 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE CIVIL SUIT 166 OF 2014**

**JO OLOLA, J
JULY 4, 2025**

BETWEEN

**MATHIAS DZOMBO JUMAA 1ST PLAINTIFF
BABU PATRICK DZOMBO 2ND PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF
PATRICK KWESHA DZOMBO (DECEASED)**

AND

**CRISPIN MWANGOLO SANGA 1ST DEFENDANT
LAND REGISTRAR KILIFI 2ND DEFENDANT
THE ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. By the Notice of Motion dated 11th December, 2024, Crispin Mwangolo Sanga (the 1st Defendant/Applicant) prays for an order staying execution of the judgment and all consequential orders against him pending the hearing and determination of an intended Appeal.
2. The Application which is supported by an Affidavit sworn by the 1st Defendant is premised on the grounds that:
 - i. That this Honourable Court delivered its Judgment on 16th October, 2024;
 - ii. The 1st Defendant lodged his Notice of Appeal dated 18th October, 2024 and has by a letter dated 22nd October, 2024, requested for certified copies of proceedings and judgment for the purposes of filing an Appeal;



- iii. That the family of the late Sanga Dzombo Juma have been in active and uninterrupted possession of the suit property for over thirty (30) years;
 - iv. Following the delivery of judgment, the Plaintiffs and their families have now invaded the suit property and commenced demolishing of houses as well as cutting down trees and crops.
 - v. Unless the Plaintiffs are restrained from evicting the 1st Defendant and his siblings from the suit property, the 1st Defendant will suffer substantial loss which the Plaintiffs will not be able to indemnify should the Appeal Succeed; and
 - vi. That the Plaintiffs do not stand to suffer any prejudice if the orders for in this application are allowed.
3. Mathias Dzombo Jumaa (the 1st Plaintiff) is opposed to the grant of the orders sought. In his Replying Affidavit sworn on 19th January, 2025, the 1st Plaintiff avers that the Applicant's Supporting Affidavit is replete with lies. It is his case that the subject matter herein is family land from which all members of the family draw their livelihood and if the orders of stay are granted the Applicant will solely continue enjoying the use of the land at the expense of other family members.
 4. The 1st Plaintiff further avers that they have never entered the portions of land belonging to the Applicant and that the Applicant ought to remain on his portion. The 1st Plaintiff asserts that there is no loss which the Applicant stands to suffer since the Plaintiffs have no intention to enter into the Applicant's portion.
 5. I have carefully perused and considered the application as well as the responses thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
 6. Order 42 Rule 6 (2) of the Civil Procedure Rules provides for stay of execution as follows:
 - “2. No order for stay of execution shall be made under sub-rule
 - (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.”
 7. As was stated in RWW –vs- EKW (2019) eKLR.

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.



Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The court when granting the stay however, must balance the interest of the Appellant with those of the Respondents.”

8. In the matter herein, the 1st Defendant asserts that the family of the late Sanga Dzombo Juma have been in active and uninterrupted possession of the suit property for over 30 years and that following the delivery of the Judgment, the Plaintiffs and their families have now invaded the suit property and started demolishing houses and cutting down trees thereon. It is his case that unless the Plaintiffs are restrained from evicting himself and his siblings from the suit property they stand to suffer substantial loss.
9. I have looked at the judgment delivered herein on 16th October, 2024 and I was unable to find any orders issued therein which could entitle the Plaintiffs to invade the property and to proceed to evict the 1st Defendant and/or his siblings from the suit property. From the pleadings filed herein, it was apparent that all the parties to the dispute reside on different portions of the land whose title is held by the 1st Defendant.
10. By the judgment delivered herein the court directed that the title deed be recalled and rectified and that the same be registered in the names of the duly appointed legal representatives of the grandfather of the disputants in trust for the 7 families residing on the suit land.
11. In my considered view, it is only fair that pending the Appeal, both sides of the dispute do maintain the positions they were in as at the time the judgment was delivered on 16th October, 2024.
12. In the premises, I hereby grant an order staying execution of prayers ‘c’, ‘d’ and ‘e’ of the judgment pending the hearing and determination of the Appeal.
13. The costs of this application shall abide the outcome of the Appeal.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF JULY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Mkomba holding brief for Mutugi for the Plaintiff

Ms. Juma holding brief Mutubia for the 1st Defendant

No Appearance for the 2nd and 3rd Defendant

