



**Mware v Ajode (Environment and Land Appeal E010 of 2025)
[2025] KEELC 5232 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5232 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E010 OF 2025**

**E ASATI, J
JULY 10, 2025**

BETWEEN

THOMAS AKOMO MWARE APPELLANT

AND

SCHOLASTICA ROSE AJODE RESPONDENT

RULING

1. The Notice of Motion application dated 14th February, 2025 filed on behalf of the Appellant and expressed to be brought pursuant to the provisions of Section 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 42 Rule 6(2) of the [Civil Procedure Rules](#) seeks for order that:-
 - a. This honourable court be pleased to grant an order of stay of execution of the judgement is Kisumu MC ELC No.37 of 2020 pending the hearing and determination of the appeal.
 - b. The costs of the application be provided for.
2. The application was supported by the averments in the Supporting Affidavit sworn by Thomas Akomo Mware, the Applicant, on 14th February, 2025.
3. The application was opposed vide the contents of the Replying Affidavit sworn by Scholastica Rose Ajode, the Respondent herein, on 20th May, 2025.
4. The application was heard orally on the 4th June, 2025 and additionally the Applicant filed written submissions dated 23/5/2025.
5. It was submitted on behalf of the Applicant that the three conditions to be fulfilled in an application for stay of execution under Order 42 Rule 6 are that: -
 - a. substantial loss may result to the Applicant unless the order sought is made;
 - b. the application was made without unreasonable delay.



- c. security as the court may order for due performance.
6. Relying on the case of *Tropical Commodities Supplies Ltd & Other v International Credit Bank Ltd (in liquidation)* (2004)2 EA 331 where it was held inter alia that substantial loss refers to any loss great or small that is of worth or value as distinguished from a loss that is merely nominal, Counsel submitted that the Applicant will suffer substantial loss which is; being evicted from part of the suit land, a loss that cannot be adequately compensated by way of damages in the event that the appeal is successful. That the Applicant is ready to comply with the security terms that may be set.
 7. Counsel submitted further that the application was brought without inordinate delay as the judgement whose execution was delivered on 7th February, 2025 and the application filed on 17th February, 2025.
 8. That the judgement whose execution is sought to be stayed directed that the Applicant be evicted from the suit land. That the Replying Affidavit filed by the Respondent does not deny that substantial loss may result.
 9. The Respondent's case as stated in the Replying Affidavit is that the piece of land where the judgement directed the Applicant to be evicted from is registered in her name. That the Applicant is asking the court to aid his illegal acts of further trespass into the said land despite the lower court granting him 90 days post judgement to vacate from the land.
 10. That the judgement did not bar the Applicant from using his land rather the court directed that both parties are in accurate occupation of their respective parcels save for the Applicant who has interfered with the Respondent's parcel.
 11. That the application as it stands threatens the Respondent's absolute right to her property and if allowed by the court, the order shall be inconsistent with the Respondent's proprietary rights over land parcel Kisumu/konya/2208.
 12. It was further submitted on behalf of the Respondent that it is not true that the Respondent intends to evict the Applicant from the land. That the eviction is from the extended road that the Applicant created for himself. That the Applicant has no arguable appeal and that he will suffer no loss since he has his land intact.
 13. I have considered the application, the grounds advanced in opposition thereof and the submissions made by Counsel. The substantive relief sought is an order of stay of execution of the judgement of the trial court pending hearing and determination of the appeal herein.
 14. The grounds for granting an order of stay of execution of judgement are provided for in Order 42 Rule 6(2) of the [Civil Procedure Rules](#) 2010 as follows:

“No order for stay of execution may 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.”
 15. It is not denied that there is a piece of land that is in dispute between the parties herein and that the judgement appealed against directed for the eviction of the Applicant from that piece of land. While



the Applicant contends that the disputed piece of land is part of his land, the Respondent's case is that the piece of land in dispute in respect of which the eviction order was granted is part of her land on which the Applicant unlawfully created a road of access for himself.

16. The trial court has already found in favour of the Respondent. The Applicant is aggrieved with the finding and consequently preferred the appeal.
17. It is common ground that the disputed piece of the land is in the occupation of the Applicant and that is why the eviction order was granted.
18. While it is important to enable the Respondent to execute the judgement and enjoy the fruits thereof, it is equally important to preserve the substratum of the appeal pending disposal of the appeal. The court finds that the applicant has demonstrated that he will suffer substantial loss if the order sought is not granted and that the judgement having been delivered on 7th February 2025 and the application filed on 17th February 2025, there was no unreasonable delay in bringing the application. Regarding security for the due performance of such decree or order as may ultimately be binding on the applicant, the court has the discretion to order the same.
19. The court finds that the application has merit and hereby allows it in the following terms;
 - i. An order of stay of execution of the judgement dated 7/2/2025 in Kisumu CMC ELC No E037 of 2020 is hereby issued pending hearing and determination of the appeal herein on condition that the applicant deposits a sum of Kenya shillings one hundred and fifty thousand only (Kshs 150, 000/=) being security, in an interest earning account in the joint names of Counsel for the applicant and Counsel for the Respondent within 45 days hereof failing which the stay of execution order granted herein shall lapse.
 - ii. Costs to the Respondent.
20. Orders accordingly.

RULING READ AND SIGNED AT KISUMU AND DELIVERED THIS 10TH JULY, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Omondi h/b for Odeny for the Appellant/Applicant.

N/A for the Respondent.

