



**Mang’eli v Katimu (Environment and Land Appeal
E021 of 2024) [2025] KEELC 4947 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4947 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E021 OF 2024**

EO OBAGA, J

JULY 3, 2025

BETWEEN

ANTHONY KYALO MANG’ELI APPELLANT

AND

SAMMY AMNGO KATIMU RESPONDENT

*(Appeal against the judgment of Hon. M. Mutua delivered
on 8th November, 2024 in CM ELC No. E018 of 2022)*

RULING

Introduction

1. This is a ruling in respect of a Notice of Motion dated 11th December, 2024 in which the Appellant/Applicant seeks stay of execution pending hearing and determination of an appeal against the judgment of Hon. M. Mutua delivered on 8th November, 2024 in CM ELC No. E018 of 2022 (Sammy Amingo Katimu vs Anthony Kyalo Mang’eli).

Applicant’s Contention

2. The Applicant contends that he was aggrieved with the judgment delivered and has appealed against the said judgment. He states that his appeal has overwhelming chances of success and that if stay of execution is not granted, he will end up paying costs to the Respondent who will not be in a position to repay the same as he is a man of straw.
3. The Applicant further states that he is ready and willing to offer security for the due performance of the decree as may be ordered by the court and further that the appeal may end up being an academic exercise if stay is not granted.



Respondent's Contention

4. The Respondent opposed the Applicant's application through a replying affidavit sworn on 23rd January, 2025. The Respondent states that the trial magistrate arrived at a correct finding that the Applicant had trespassed on to the property through his employees and therefore proceeded to grant an order of permanent injunction restraining the trespass. He therefore avers that the appeal which the Applicant has filed has no chances of success.
5. The Respondent states that he is not a man of straw as he is the owner of the suit property which will cater for any costs which may arise in case the Applicant succeeds in his appeal after he has paid costs. He further states that in any case, the process of ascertaining costs has not been put in motion and that the Applicant cannot seek to stay the injunction which was granted unless his intention is to continue to trespass into his property.
6. The Respondent further states that the Applicant has not met the threshold of grant of stay pending appeal and that the appeal has only been filed to prevent him from enjoying the fruits of his judgment. He contends if stay of execution were to be granted, it will give an opportunity to the Applicant to continue trespassing to his property.

Parties Submissions

7. The parties were directed to file written submissions. The Applicant filed his submissions dated 11th February, 2025. The Respondent filed his submissions dated 26th February, 2025.

Applicant's Submissions

8. The Applicant submitted that he had overwhelming chances of success in his appeal. He pointed at line 15 of the trial court's judgment and submitted that the trial magistrate had absolved the Applicant of any blame yet he went ahead to slap him with costs and injunction.
9. He submitted that the Respondent is a man of straw who will not be in a position to refund the costs which will have been paid if stay is not granted. He relied on the case of Butt –vs- Rent Restriction Tribunal 1982) KLR 417 where it was stated as follows:

- “ 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the Applicant at the end of the proceedings.
4. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the Appellant had an undoubted right of appeal”.



10. The Applicant also relied on the case of James Wangalwa & Another -vs- Agnes Naliaka Cheseto (2012) eKLR where the court of Appeal held as follows:

“An Applicant must establish factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as a successful party”.

Respondent’s Submissions

11. The Respondent submitted that he is a man of means as he is the owner of the suit property. He submitted that the Applicant had not met the threshold for grant pending appeal. He relied on the case of James Wangalwa & Another -vs- Agnes Naliaka Cheseto (2012) eKLR where it was stated as follows:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process” (emphasis ours).

12. The Respondent further submitted that should the court grant stay, it should order that the Applicant provides security in the sum of Kshs.500,000/= to be deposited in a joint interest earning account in the name of the advocates for the parties.

Analysis and Determination

13. I have carefully considered the Applicant’s application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties and the authorities cited. The only issue for determination is whether the Applicant has met the threshold for grant of stay execution pending appeal.
14. The conditions for grant of stay of execution pending appeal are set out under Order 42 Rule 6(2) of the Civil Procedure Rules. They are firstly that an application for stay has to be brought without unreasonable delay. Secondly, the Applicant has to demonstrate that he will suffer substantial loss if stay of execution is not granted. Thirdly, there has to be such security for the due performance of the decree as may ultimately be binding upon the Applicant on the decree.
15. In the instant case, the impugned judgment was delivered on 8th November, 2024. The application for stay was filed on 11th November, 2024. The application was therefore filed promptly and within reasonable time. On the issue of demonstration of substantial loss, it is important to look at the reliefs which were granted in the judgment. The Applicant was restrained from trespassing on to the Respondent’s land and was ordered to pay costs.
16. From what was granted, the Applicant has not demonstrated how he will suffer substantial loss if stay is not granted. Execution can only be on costs of the suit. This will not in any way render the appeal nugatory or an academic exercise.
17. The Applicant is saying that the Respondent is a man of straw who will not be in a position to refund the money should the appeal succeed. The Respondent is the owner of the suit property. There is nothing which has been stated that he has intention of selling it. This is not a person who can be said to be a man of straw.



Disposition

18. Demonstration of substantial loss is the cornerstone of any grant of stay of execution. As the Applicant has not demonstrated that he will suffer substantial loss absent stay, I find that his application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 3RD DAY OF JULY, 2025.

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HON. E. O. OBAGA

JUDGE

In The Presence Of:

Mr. Munyasya for Respondent.

Mr. Njuguna for Mr. Ngolya for Appellant

Court assistant – Steve Musyoki

