



**Rainbow Investments Limited v Mbatia (Environment and Land
Case 108 of 2010) [2025] KEELC 5014 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5014 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 108 OF 2010**

JO OLOLA, J

JULY 4, 2025

BETWEEN

RAINBOW INVESTMENTS LIMITED PLAINTIFF

AND

ANN MBATIA DEFENDANT

RULING

1. By the Notice of Motion dated 30th January, 2025, Anne Mbatia (the Defendant) prays for an order that pending the hearing and determination of Civil Appeal No. COACA/E018/2025, this Honorable Court be pleased to issue an order for the stay of execution of the judgment delivered herein on 9th December, 2024.
2. The Application which is supported by an affidavit sworn by the Defendant is based on the grounds, inter alia:
 - a. That the Defendant is aggrieved by the decision of the Court and intends to Appeal the same to the Court of Appeal having duly filed a Notice of Appeal and requested for typed proceedings.
 - b. That other than ordering the Defendant to pay damages in the sum of Kshs. 3,500,000/= the court issued an order of permanent injunction restraining the Defendant from dealing with L.R. No. 22525 CR No. 146, a place which the Defendant has known as home since 1978;
 - c. The Defendant has since received certified copies of the proceedings and has filed the Record of Appeal being Civil Appeal No. COACA/E018/2025;
 - d. That the Defendant believes that she has a meritorious Appeal with high chances of success;
 - e. That the injunctive orders will result in the Defendant's eviction from the suit property if allowed to proceed thereby rendering the Appeal nugatory;



- f. That the Defendant will suffer substantial loss should the orders sought herein be declined;
 - g. That the application has been made without unreasonable delay and the Defendant is ready and willing to abide by conditions as to security as this court may impose; and
 - h. That it is therefore just and fair that this Honourable Court grants the prayer for stay of execution pending the hearing and determination of the Appeal.
3. Abdallah Ali Taib, (the 1st Defendant in the Counterclaim) is opposed to the grant of the orders of stay. In his Replying Affidavit sworn on 12th February, 2025, the 1st Defendant avers that the Applicant has not shown sufficient grounds why this court should interfere with the discretion of the trial court. The 1st Defendant further asserts that the Applicant has failed to demonstrate what substantial loss she stands to suffer if the execution proceeds.
 4. The 1st Defendant further avers that he is capable of refunding the sum of Kshs. 3,500,000/= awarded as general damages for trespass should the Appellate Court overturn the decision of the trial court.
 5. Rainbow Investment Ltd (the Plaintiff) is equally opposed to the application. In a Replying Affidavit sworn on 17th February 2025 by its Property Manager Said Hassan Mwadzaya, the Plaintiff avers that prior to the Judgement, it has been kept out of the land for 14 years and it is only fair and proper that it be allowed to enjoy the fruits of its judgment.
 6. The Plaintiff asserts that the suit property is largely empty with no farming activities on-going and the purported farming activities exhibited by the Applicant does not capture the current position of the suitland.
 7. I have carefully perused and considered the application as well as the respective responses thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
 8. Order 42 Rule 6 of the Civil Procedure Rules provides for stay of execution as follows:
 - “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (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.



9. In the Case of *RWW v EKW* [2019] eKLR, the Court observed that:

“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.”

10. Speaking to the same issue in the earlier case of *Butt v Rent Restriction Tribunal* [1982] KLR 417, the Court of Appeal 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 that 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.
5. The Court in exercising its power under Order XLI rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to deposit security for costs as ordered will cause the order for stay of execution to lapse.
”

11. In the matter before me, it was not in dispute that the Applicant had first entered into the suit property in the early 1980s claiming to have acquired the same by way of purchase. Sometime in the year 2010, the area in which the suit property is situated was declared an Adjudication Section and the 1st Defendant in the Counterclaim was thereafter issued with a title for the property.

12. It was as a result of that adjudication process that the Plaintiff herein filed this suit accusing the Applicant of trespass to the suit property.

13. According to the Applicant, she has since extensively developed the property carrying out extensive farming activities and she stands to suffer substantial loss unless the court grants the orders of stay. While the Respondents contend that the Applicant had not demonstrated that she stands to suffer substantial loss, the Applicant has in her Supplementary Affidavit exhibited a copy of the Report prepared by the Court when it visited the locus in quo in Mazeras, Kilifi County on 24th January, 2024.

14. A perusal of that Report which forms part of the Judgment of the Court reveals that the Applicant has what the court described as ‘a building or homestead’ on the property. The court further noted that she had cattle and goats grazing on the land as well as chicken whose numbers were estimated at 5,800. Given the circumstances of this case, I was persuaded that the Applicant stood to suffer substantial loss.



15. As Ogolla J., observed in *Tropical Commodities Suppliers Ltd & Others v International Credit Bank Ltd. (in Liquidation)* [2004] 2 EA 331:

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.”

16. In the circumstances herein, it was my considered view that there was need to preserve that status quo and to give the Appellant a chance to ventilate her case before the Court of Appeal. Given the period of time the matter has taken in court, I am persuaded that this is a matter in which the court should grant a conditional stay.

17. In the premises, I hereby allow the Motion dated 30th January, 2025 in terms of Prayer No. 3 thereof on condition that the Applicant deposits the sum of Kshs. 2,000,000/= in a joint interest earning account in the names of the Counsels for the Applicant as well as the Plaintiff and the 1st Defendant in the Counterclaim within 45 days from today.

18. In default, this application shall stand dismissed with costs.

19. The costs of the application shall otherwise abide the Appeal.

20. It is so ordered.

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:

a. Ms. Firdaus Court Assistant.

b. Mr. Okanga Advocate for the Plaintiff

c. Ms. Mango and Mr. Omwenga Advocates for the Defendant

