



County Government of Vihiga v Tiego (Environment and Land Appeal E012 of 2025) [2025] KEELC 6045 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6045 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND APPEAL E012 OF 2025**

**E ASATI, J
SEPTEMBER 18, 2025**

BETWEEN

COUNTY GOVERNMENT OF VIHIGA APPLICANT

AND

PAULLAH MITTO TIEGO RESPONDENT

RULING

1. The application before court for determination is the Notice of Motion dated 15th June, 2025 brought on behalf of the Appellant pursuant to the provisions of sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*.
2. The application seeks for orders that;
 - a. Pending the hearing and determination of the appeal herein, the court be pleased to order stay of execution of the ruling dated 12th June, 2025 delivered by Hon. Jacqueline Agonda, together with any consequential orders arising therefrom.
 - b. The costs of the application be provided for.
3. The application was based on the grounds that the trial court issued interim injunctive orders prohibiting the Appellant from constructing installing or erecting any structure whether temporary or permanent on or in front of LR No. South Maragoli/ Buyonga/1XXX pending hearing and determination of the application dated 30th May, 2025. That on 12th June, 2025 when the matter came up for mention, Counsel for the Respondent made oral allegations that the Respondent had not complied with the orders of the court and sought that the structure, being a boda boda shade be demolished. That the trial court made a ruling and issued orders for demolition of the said structure being a boda boda shed set up at Kakamega stage, Majengo without a formal application or any evidence tabled before court. That by the time of service of the orders, the shed had already been installed. That the Applicant being dissatisfied with the ruling has lodged an appeal against the ruling.



4. That demolition will occasion great loss as public resources were used to construct the structure. That the orders of stay of execution will cushion the public from the said loss. That execution of the ruling before the appeal is heard will render the appeal nugatory. That the application was brought promptly without delay and that the Applicant is willing to abide by any conditions that shall be set by the court.
5. The application was supported by the averment in the Supporting Affidavit sworn by Shijenje Teresiah Mutola, Legal Counsel of the Appellant, and the annexure thereto.
6. The application was opposed vide the contents of the Replying Affidavit sworn by the Respondent on 23rd June, 2025. The Respondent's case is that he is the registered and legal owner of that property known as LR No. South Maragoli/Buyonga/1XXX.
7. That at the time of filing the suit in the trial court the Applicant herein was welding together what seemed to be a temporary structure with the intention of installing it on or in front of the suit land.
8. That as at 30th May, 2025 when the application was filed before the trial court, the Applicant herein was only welding together metal works and had not started to install or erect the temporary structure on or in front of the suit land.
9. That on 30th May, 2025 the trial court issued a temporary injunction prohibiting the Applicant herein from constructing, installing or erecting any structure on or in front of the suit property. That the order was served upon the Applicant the same day 30th May, 2025. That in blatant disregard of the court order, the Applicant went ahead with the construction/welding of the boda boda shed and installed/erected it on/or at the front of the suit land.
10. That on 12th June, 2025, the Respondent's advocate brought to the court's attention the fact that the Applicant had gone ahead and installed boda boda shed in total disregard of the court order. That upon representation of both parties and considering the evidence on record including pictorial evidence that the court ordered that the Applicant demolishes any shed erected by it on the subject property at its own costs.
11. That the court was vested with jurisdiction to issue mandatory orders compelling a party to comply with court orders even in instances where such an application is made orally.
12. That the Applicant's conduct comprised of wilful defiance and disrespect toward a court of law and was an affront to the court's authority and the supremacy of the law.
13. That the appeal lacks merit and the Appellant cannot be deemed to have a prima facie case considering that the Appellant has no legal right to mount a shed either on the suit property or the road reserve. That the land on which the shed is mounted does not belong to the Appellant/applicant.
The application was heard by way of oral submissions.
14. On behalf of the Appellant, Counsel relied on the provisions of order 42 Rule 6(2) of the [Civil Procedure Rules](#) and submitted that substantial loss will be suffered because public resources were used to install the structure.
15. That by the time the Applicant was served with the court order, the structure had already been installed. That the suit which prays for demolition is yet to be heard. That the trial court ought to have been moved appropriately.
16. That there was no unreasonable delay in bringing the application as the order sought to be stayed was issued on 12th June, 2025 and that the application filed on 14th June, 2025. That the Applicant is ready to be bound by any conditions the court may impose regarding security.



17. On behalf of the Respondent, it was submitted that as at the time of service of the court order upon the Applicant on 30th May, 2025, the Applicant was welding together a metallic shed. That the county wilfully disobeyed the order and went ahead to install the shed.
18. That damages would be adequate to compensate the Applicant if at all the lower court orders of demolition are set aside.
19. That the court should not allow an Applicant who has disobeyed court orders to enjoy stay of execution.
20. Counsel relied on the case of *Samuel Maweu v National Land Commission* (2020)eKLR and prayed that the application be dismissed so as to preserve the rule of law.
21. I have considered the contents of the application, the Replying Affidavit and the submissions made. The grounds for grant of orders of stay of execution of decree/judgement are provided for in Order 42 Rule 6(2) of the *Civil Procedure Rules* 2010 it provides as follows:
 - 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.”
22. On substantial loss it was submitted by the appellant that if the demolition happened, public resources used to build the shed will be wasted. The respondent’s position is that if the appeal eventually succeeds, whatever loss suffered by reason of demolition can be compensated by way of damages. An order of stay of execution is meant to preserve the subject matter or disputed property or the status quo thereof.
23. In the case of *Shell Kenya Ltd v Benjamin Karuga Kibiru & Another* [1986] eKLR 410 the court stated that
 - a. “if it is shown that execution would render a proposed appeal nugatory then a stay can properly be granted.”
24. Another condition for grant of an order of stay of execution is that such security as the court orders for the due performance of such decree or order as may ultimately be binding on him be given by the Applicant. The purpose of this requirement as stated in the case of *Aron C. Sharma v Ashana Raikundalia t/a Raikundaria & Co Advocates & 2 others* [2014]eKLR is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant.
25. In the case of *HGE v SM* [2020] eKLR the court held that the issue of security is discretionary and that it is upon the court to determine the same.
26. In the case of *Butt v Rent Restriction Tribunal* [1982]KLR 417 the court held, inter alia, that:
 - a.) The power of the court to grant or refuse an Application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal



- b.) The general principle in granting or refusing a stay is: if there is no other overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory...”

27. Counsel for the applicant indicated to court that the applicant was ready to abide by terms that the court may impose regarding security.
28. The Respondent’s opposition to the application is that the structure sought to be preserved by the Order of stay of execution sought was installed as a result of disobedience of a court order. While the Applicant maintains that by the time it was served with the court order it had already mounted/ installed the structure. The Respondent contends that the structure was mounted/installed after service of court order in total disregard of the court order and should not therefore be allowed to enjoy stay of execution.
29. This is the crux of the appeal. From the grounds of appeal contained in the Memorandum of Appeal, the appeal will also be addressing the issue of whether disobedience of the court order was proved before issuance of the demolition order.
30. I find that the requisite grounds for grant of an order of stay of execution have been demonstrated and here allow the application as follows:
- a. Pending the hearing and determination of the appeal herein, an order of stay of execution of the ruling dated 12th June, 2025 delivered by Hon. Jacqueline Agonda, together with any consequential orders arising therefrom is hereby granted on condition that the applicant deposits in court the sum of Kshs 150,000/= (Kenya shillings one hundred fifty thousand only) being security within 45 days hereof failing which the stay of execution order hereby granted shall lapse.
- b. Costs of the application to abide the appeal.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 18TH DAY OF SEPTEMBER, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:-

Ajevi - Court Assistant.

N/A for the appellant/Applicant

Ombeva for the Respondent.

