



**Gregory v Mwangi (Environment and Land Appeal 27 of 2022)
[2025] KEELC 6087 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6087 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 27 OF 2022**

**JO OLOLA, J
SEPTEMBER 19, 2025**

BETWEEN

GITHIRI MAINA GREGORY APPLICANT

AND

JOHNSTONE KAMAU MWANGI RESPONDENT

RULING

1. By the Notice of Motion dated 18th June, 2024, Githiri Maina Gregory (the Applicant) prays for an order of stay of execution of the judgment delivered herein on 7th June, 2024 pending the hearing and determination of an intended appeal in the Court of Appeal.
2. The application which is supported by an Affidavit sworn by the Applicant is premised on the grounds that:
 - i. Land Parcel No. Mugunda/Nairutia Block 1/483 is not in the name of the Applicant and therefore the Applicant could not transfer any portion thereof despite the fact that there was an agreement between the Applicant and the Respondent; and
 - ii. The District Surveyor and the Land Registrar Nyeri advised both the Applicant and the Respondent to wait for the Land Registrar to rectify the registers for the two parcels being Block 1/483 and 485 but the Respondent could not wait for the Land Register to rectify the Registers.
3. Johnstone Kamau Mwangi (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 12th September 2024, the Respondent avers that the application is malicious and an abuse of the court process as the issues raised therein have been conclusively determined by this court.
4. The Respondent further avers that the Applicant's contention that he is unable to transfer the Suitland is not clear as the Applicant is the registered owner thereof. It is further his case that the Applicant has



not demonstrated the substantial loss he is likely to suffer and asserts that the Respondent stands to suffer prejudice if the orders are granted.

5. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before the court by both parties.
6. By this application, the Applicant prays for an order of stay of execution of the judgment delivered herein on 7th June 2024 pending the hearing and determination of an intended Appeal to the Court of Appeal.
7. In respect of an order for stay of execution, Order 42 Rule 6 of the Civil Procedure Rules, 2010 provides 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 subrule (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.”

8. 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.”

9. Similarly, in the case of *Samvir Trustee Limited –vs- Guardian Bank Limited (2007) eKLR*, it was held that:

“The court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales of



justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgement. It is a fundamental factor to bear in mind that, a successful party is prima facie entitled to the fruits of his judgement, hence the consequence of a judgement is that it has defined the rights of a party with definitive conclusion.”

10. In the matter before the court, the Applicant has not demonstrated any loss, substantial or otherwise that he stands to suffer if the orders of stay of execution are not granted. From the record herein, it was evident that the Applicant entered into a sale agreement dated 18th February, 2016 with the Respondent wherein the Applicant agreed to sell the suit property to the Respondent.
11. The Applicant has not denied that he received the purchase price from the Respondent. His contention that he subsequently realized that the suit property was registered in the name of his uncle and that he could therefore not transfer the same is not supported by any evidence as the title that was produced in court revealed that the property was registered in the Applicant’s name.
12. In the circumstances herein, I was not persuaded that there was any merit in the Motion dated 18th June, 2024. I dismiss the same with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Githiri Maina Gregory the Appellant present in person

No Appearance for the Respondents

