



Thuo t/a Export Solve Agencies v Atenya & 7 others (Environment and Land Case Civil Suit 85 of 2019) [2025] KEELC 6126 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6126 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT 85 OF 2019
AY KOROSS, J
SEPTEMBER 23, 2025**

BETWEEN

LOISE WAMBUI THUO T/A EXPORT SOLVE AGENCIES PLAINTIFF

AND

**GEORGE ATENYA 1ST DEFENDANT
NOVELTY MANUFACTURING LIMITED 2ND DEFENDANT
USHINDI COMMUNICATIONS LIMITED 3RD DEFENDANT
ALLCAN AGENCY NETWORK LIMITED 4TH DEFENDANT
CHIEF LAND REGISTRAR 5TH DEFENDANT
NATIONAL LAND COMMISSION 6TH DEFENDANT
DIRECTOR OF SURVEYS 7TH DEFENDANT
ATTORNEY GENERAL 8TH DEFENDANT**

RULING

1. Being dissatisfied with the judgment delivered by this court on 5/02/2025, the plaintiff promptly lodged a notice of appeal on 7/02/2025 thus paving way for this court to entertain the motion dated 5/03/2025 that is the subject of this ruling expressed to have been moved within the provisions of Article 159 2 (d) of *the Constitution* of Kenya, Sections 1A, 1B & 3A of the *Civil Procedure Act* and Orders 42 Rule 6 (1) and 51 Rule 1 of the Civil Procedure Rules. The following reliefs were sought in the motion:-
 - a. Spent.
 - b. Spent.



- c. Spent.
 - d. The honourable court be pleased to grant an order of stay of execution of the judgment dated 5/02/2025, the decree therein and all other consequential orders pending the hearing and determination of the plaintiff's appeal in Nairobi Court of Appeal Civil Appeal No. E156/2025, Loise Wambui Thuo t/a Export Solve Agencies v George Atinya & Others.
 - e. The costs of and incidental to the motion be awarded to the plaintiff.
2. The motion is supported by the grounds therein as well as the affidavit sworn on 5/03/2025 by the plaintiff. In a nutshell, she stated that
- a) She is aggrieved by the entire judgment delivered by this court and has appealed to the Court of Appeal,
 - b) Her appeal is arguable and has good chances of success as illustrated in the memorandum of appeal lodged; and
 - c) If the stay of execution of the judgment is not granted, the appeal will be rendered nugatory,
 - d) If the execution ensues, the plaintiff will suffer irreparable loss and damage,
 - e) Stay of execution of the judgment will ensure that the suit property is preserved pending hearing and determination of the appeal, and
 - f) The plaintiff is ready and willing to abide by any conditions of stay that this honourable court deems necessary to set.
3. The motion is opposed vide replying affidavit sworn by Eric Chege Kamau for the 4th defendant on 28/03/2025. In short, he asserted that:
- a) The 4th defendant is in possession and occupation of the suit property and, being a successful litigant, the order for stay of execution should not be made,
 - b) Save for the intention and filing of the appeals against the judgement, the plaintiff and the 2nd defendant have not satisfied the conditions for the grant of the reliefs sought in their respective motions; and
 - c) Neither the plaintiff nor the 2nd defendant have set out and/or demonstrated the nature and scope of the substantial loss that they stand to suffer,
 - d) The best interests of this case would be served if the 4th defendant being the successful party be allowed to continue in possession and occupation of the suit property with all the rights of use with reservations against subdivision, sale and transfer to third parties pending the hearing and determination of the appeals by the plaintiff and the 2nd defendant; and
 - e) Orders be issued restraining the plaintiff and/or the 2nd defendant from entering, occupying, trespassing or interfering with the 4th defendant's quiet possession pending the hearing and determination of the appeals,
 - f) Since the plaintiff has undertaken to comply with the conditions for the grant of the stay of execution, security should be furnished in the sum of kshs 2,000,000/= being amounts awarded to the 4th defendant as general damages in the form of deposit in court or a joint interest earning account in the names of the advocates on record within such time as this court may determine.



4. It is worth noting that the motion referenced in the 4th defendant's replying affidavit is the one dated 24/02/2025 by the 2nd defendant. However, despite directions from the court, their counsel has not complied with the court's directions, and it has emerged that, in the first place, it was not paid for. On that basis, it is hereby expunged from the record.
5. The motion was canvassed by way of oral submissions, whereby M/s. Thuku counsel, for the plaintiff, urged this court to allow the prayers sought in the motion. She also argued that the status quo orders issued by the court on 6/03/2025 had been breached as a container had been placed at the entry of the suit property and urged this court to direct that it be removed. As for security for costs, a sum of kshs. 100,000/= was offered with M/s. Thuku stating the plaintiff had financial hardship.
6. As a quick rejoinder, Mr. Karanja, counsel for the 4th defendant, reiterated the averments contained in the replying affidavit of Mr. Kamau. Unfortunately, the other parties did not participate in the proceedings.
7. This court has carefully considered the motion, its grounds, affidavits, and oral submissions, and the singular issue for determination is whether the plaintiff has met the threshold to warrant a stay of execution pending appeal.
8. As highlighted above, the instant motion has been brought within the auspices of Order 42 Rule 6 of the Civil Procedure Rules and the long-standing principles therein are that an applicant has to demonstrate that the motion is brought without undue delay, demonstrate to the court's satisfaction that substantial loss may result to her unless stay of execution is ordered and award such security as the court orders for the due performance of such decree or order as may ultimately be binding on her has been given. Furthermore, a notice of appeal against the decision of this court must have been filed within the stipulated timelines.
9. Such tests, such as demonstrating that the appeal or intended appeal is arguable or that, unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory as advanced by the plaintiff, are not criteria applied in this instance as they are the preserve of the Court of Appeal as it is the court to which an appeal has been preferred to. Consequently, these 2 principles will not be tested.
10. It is worth noting that when entertaining motions such as this, this court exercises judicious discretion and in doing so it is guided by the law, evidence and reason.
11. Concerning the criterion of delay, it is undeniable that the appellant filed the motion promptly, as it was filed on 5/03/2025, which was just close to a month from when the judgment was rendered.
12. As regards the criterion of substantial loss, it has been held time again that it is the fulcrum upon which an order of stay of execution can be granted, and this was affirmed in the well-cited Court of Appeal decision of Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR), where the court stated thus on this particular principal:-

“Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money.”
13. In the circumstances of this case, the 4th defendant's assertion that it was in occupation of LR. No. 12715/594 (IR 47715) (suit property) was not displaced. It would appear that the 4th defendant has placed a container at the entrance of the suit property to prevent access, but since this evidence was made from the bar, this court will not dwell much on it.



14. From the judgment, the plaintiff and the 4th defendant held title documents to the suit property, and in its analysis and determination, this court upheld the 4th defendant's title documents and found it was the owner of the suit property and dismissed the plaintiff's case on finding she did not hold a valid title document. In the circumstances where the 4th defendant already holds a title document and is in occupation, this court is not satisfied that any substantial loss will be suffered by the plaintiff. It finds that the threshold for stay of execution has not been met.
15. However, the 4th defendant has extended an olive branch and stated that it is willing to maintain the status quo of the suit property and has defined what the status quo means. Had this proposition not been made, this court would have dismissed the motion.
16. This proposal by the 4th defendant has its footing in the Court of Appeal decision of Rhoda Mukuma v John Abuoga [1988] eKLR, which held that when a party is exercising her right of appeal, the court, in exercise of its judicious discretion, shall be inclined to preserve the status quo until the appeal is heard. For the above reason, the court grants the following final disposal orders: -
 - a. That pending hearing and determination of the substantive appeal, the status quo on land parcel no. LR. No. 12715/594 (IR 47715) shall be maintained.
 - b. That status quo means that pending the hearing and determination of the appeal, there shall be no subdivision, sale or transfer of land parcel no. LR. No. 12715/594 (IR 47715).
 - c. That pending hearing and determination of the appeal, the 4th defendant's use, occupation, and possession of land parcel no. LR. No. 12715/594 (IR 47715) shall not be interfered with by any of the parties to the suit.
 - d. That order nos. (a) and (b) are issued subject to the plaintiff depositing the sum of Kshs. 300,000/= in an interest-earning joint account in the names of the advocates on record for the plaintiff and the 4th defendant within 30 days from the date hereof, in default, the 4th defendant shall be at liberty to execute the decree of this court.
 - e. That costs are awarded to the 4th defendant.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 23RD DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

23.09.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Muteti holding brief for B.M. Musau for plaintiff.

Mr. Githinji for 2nd and 4th defendants.

Ms Kanja- Court Assistant.

