



**Mudavadi v Nasibu Holdings Limited (Environment and Land Appeal
E002 of 2025) [2025] KEELC 3851 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3851 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND APPEAL E002 OF 2025**

E ASATI, J

MAY 15, 2025

BETWEEN

MUSALIA MUDAVADI APPELLANT

AND

NASIBU HOLDINGS LIMITED RESPONDENT

*(Being an Appeal against the Ruling and Orders of Hon. Agonda -
PM given on 28th January 2025 in Vihiga MCELC No. E055 OF 2024)*

RULING

1. This ruling is in respect of the Notice of Motion application dated 30th January, 2025 brought by the Appellant pursuant to the provisions of articles 23 and 40 of *the Constitution* of Kenya, 2010, sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 Rules 6 and 7 and Order 50 Rule 1 Civil Procedure Rules 2010.

The application seeks for orders that;

- a. Pending the hearing and determination of the appeal, there be an order issued directing that the status quo that was obtaining ante 24th September, 2024 when the Respondent filed Vihiga/MCLE E055/2024 be maintained by the Appellant remaining in exclusive ownership, possession and occupation of all that land known as L.R. N. Maragoli/bugina/1XX5.
 - b. Pending the hearing and determination of this appeal, there be stay of proceedings in the lower court in Vihiga PM MCLE NO.E055/2024.
 - c. The Respondent be condemned to pay the costs of this application.
2. The application is supported by the averments in the Supporting Affidavit of Nelson Chagenya sworn on 30th January, 2025 and the annexures thereto.



3. The application was opposed vide the averments in the Replying Affidavit of Oliver Kehodo Osengo sworn on 11th February, 2024 and the annexures therefore.
4. The Respondent's case is that the application should be dismissed as; no leave to appeal was sought and the appeal is therefore fatally defective, the Supporting Affidavit is sworn by a deponent who has no locus standi and the applicant has not met the test for issue of an order of stay of execution.
5. The application was canvassed by way of written submissions. It was submitted on behalf of the Applicant vide the written submissions dated 28th February, 2025 filed by Emily & Associates that the issues for determination in the application are;
 - i. whether the Supporting Affidavit sworn on behalf of the Applicant is defective.
 - ii. whether the Appellant has demonstrated substantial loss.
 - iii. whether the application is merited and deserving of the orders sought.
6. On the first issue, Counsel submitted that the orders appealed against fall within the ambit of the pleadings under Order 43(4) where appeal is as of right and no leave is required. Counsel relied on the case of Circuit Business Systems Limited -vs- County Government of Siaya [2020]eKLR to support the submissions.
7. On whether or not the Supporting Affidavit is defective, Counsel submitted that other than the Verifying Affidavit, Affidavits can be sworn on behalf of individuals by anybody as long as that person is possessed of the information that he depones on. In support of this submissions, Counsel relied on the case of Mombasa HCCC 498 of 1995 Peter Onyango Onyiego -vs- Kenya Ports Authority [2004]eKLR where the court held that other than the Verifying Affidavit which must be sworn by the Plaintiff or his authorized agents all other Affidavits filed and used in courts can be sworn on behalf of individuals or corporations by any body as long as that person is possessed of the facts and/or information that he depones on that in the rules of evidence would be admissible.
8. Counsel submitted that the Respondent's attempt to discredit the Supporting Affidavit lacks merit.
9. On whether the application meets the threshold for grant of the orders sought, Counsel relied on the case of Halal & another -vs- Thortan & Turnip Ltd. (1990)eKLR and Butt -vs- Rent Restriction Tribunal Civil Application NO.NAI 6 of 1979 and submitted that the applicant has an arguable appeal and that the Applicant had demonstrated that he will suffer substantial loss. Counsel submitted further that the application was filed timeously and that the Applicant has undertaken to provide security in the form of an insurance bond for Kshs.4,000,000/- which is the purchase price the Respondent paid.
10. Counsel relied on the case of Kenya Airline Pilots Association (KALPA) -VS- Co-operation Bank of Kenya Limited & Another [2020eKLR where it was held that by maintaining the status quo the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or changed. That the Applicant has sought for a specific order of status quo ante 24th September, 2024 which requires the Applicant to remain in possession of the suit land on condition that the court will give including freezing activities on the land.
11. On stay of the proceedings of the trial court pending the appeal, Counsel submitted that by its findings on the application before it, the trial court determined at the interlocutory stage, that the Respondent was the rightful owner of the suit land and that the Applicant had acted illegally, that with such findings, if the suit is to proceed before determination of the appeal, the Applicant's case will be prejudiced.



12. Counsel relied on the case of Kenya Anti-corruption Commission -vs- Bhanga Limited & Another [2009]eKLR where the Court of Appeal held that making conclusive findings of the law at an interlocutory stage may prejudice a pending suit. Counsel urged the court to allow the application.
13. On behalf of the Respondent, written submissions dated 11th March, 2024 were filed by Kaplan & Stratton Advocates.
14. Counsel submitted that there is no dispute that the Respondent has been in lawful and continuous occupation of the property for over 13 years.
16. That there is also no dispute that the Applicant briefly took possession in July, 2024 when he without notice or a court order aggressively ejected the Respondent from the suit property. That the illegality was corrected by the trial court which put the Respondent back in possession. Counsel submitted further that having obtained possession by impunity and wanton disregard of the law, the Applicant now seeks the protection of the court to clothe his actions with color of the law.
17. Counsel relied on the case of Kamau Mucuha -vs- Ripples Ltd (1993) eKLR to the effect that a party ought not be allowed to retain a position of advantage that it obtained through planned and blatant unlawful acts.
18. On whether leave was required to file the appeal, Counsel submitted that the Respondent's application before the trial court was brought pursuant to the provisions of Order 40 Rule, 2, 3 and 8, Order 51 Rule 1 Civil Procedure Rules, Section 3A Civil Act and Section 3 *Environment and Land Court Act*, Article 24, 27, 40 47 and 50 of *the Constitution* of Kenya 2010, Section 68 of the *Land Registration Act*, Section 93 of the *Law of Succession Act* and Section 27 of the Registered *Land Act*. That the trial court allowed the application.
19. I have considered the application, the ground advanced in opposition thereto and the submissions filed.
20. The first relief sought is for an order of status quo that was obtaining ante 24th September, 2024. An order of status quo is meant to preserve the situation as it exists.
21. Although as at 24th September, 2024 the Applicant had possession of the suit land which from the evidence on record, he had taken in the month of July, 2024, it is not disputed that the said status quo changed subsequently by virtue of a court order that restrained the applicant from entry thereunto. The court order is the subject of the appeal herein. To order for status quo as prayed will involve removal of the Respondent from the land and handing over of vacant possession to the applicant. That is not the function of an order of status quo.
22. In Fatuma Abdi Jillo -vs- Kuro Langesen & Another [2021]eKLR "Muriithi J. in Baobab Beach Resort quoted by F. Tuiyo in Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause NO.11 of 2012 the court described the nature of a status quo order as follows:-

“In my view, an order of status quo to be maintained is difference from an order of injunction both in terms of principles for grant and the practical effect of each; while the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case among other principles be considered, the former is simply an auxiliary order for the preservation of the situation, as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of a right or a prima facie case.



23. In its effect, an injunction may compel the doing or restraining the doing of a certain act, such as respectively, the reinstatement of an evicted tenant in possession, an order of status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”
24. In the circumstances, the order of status quo as prayed is not available.
25. As regards the prayer for an order of stay of the proceedings before the trial court, in Niazsons (K) Ltd - vs- China Road & Bridge Corporation Kenya (2001)eKLR; it was held that where the appeal may have serious effects on the entire case so that stay of proceedings if not granted the result of the appeal may render the orders made nugatory and render the exercise futile, stay should be granted.
26. In Kenya Wildlife Service Vs James Mutembei (2019) eKLR, Gikonyo J held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”.
27. The appeal herein is from a ruling on an interlocutory application. It is an appeal that ought to be disposed of expeditiously. Hence, in my view, no prejudice may be occasioned by an order of stay of further proceedings to the Respondent who is in occupation of the disputed land. The application therefore succeeds partly in that an order of stay of further proceedings of the lower court case No VIHIGA PM MCLE NO. E055 OF 2024 is hereby granted pending the hearing and determination of the appeal herein.
28. To expedite the hearing and determination of the appeal directions are hereby given that the appeal be mentioned on 12/6/2025 for directions and in the meantime the record of appeal be filed and served before then.
29. Each party to bear own costs of the application.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 15TH DAY OF MAY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi - Court Assistant.

Kadenyi for the Appellant/Applicant.

Njenga for the Respondent.

