



**Rayit & 2 others v Rayit (Environment & Land Case
E159 of 2023) [2025] KEELC 4033 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4033 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E159 OF 2023**

JA MOGENI, J

MAY 14, 2025

BETWEEN

AVTAR SINGH RAYIT 1ST PLAINTIFF

KAMALJIT SINGH RAYIT 2ND PLAINTIFF

KULWANT KAUR RAYIT 3RD PLAINTIFF

AND

RAJINDER SINGH RAYIT DEFENDANT

RULING

1. Before this Court for determination is the Defendant/Applicant's Notice of Motion Application dated 24/07/2024 brought pursuant to Order 42 Rule 6 the Civil Procedure Rules. The Defendant/Applicant is seeking for the following orders:-
 - a. Spent.
 - b. That pending the hearing and determination of this Application, a temporary order of stay of execution of the Judgment delivered on 13th June 2024 by the Honorable Lady Justice Mogeni be issued.
 - c. That pending the hearing and determination of an intended appeal by the Defendant to the Court of Appeal, an order of stay of execution of the Judgment delivered on 13th June 2024 by the Honorable Lady Justice Mogeni be issued.
 - d. That the costs be provided for.
2. The Application is premised on the grounds stated on the face of the Application together with the Supporting Affidavit of RAJINDER SINGH RAYIT, the Defendant/Applicant herein sworn on even date. I do not need to reproduce the same.



3. The Application is opposed. There is a Replying Affidavit by Avatar Singh Rayit the Plaintiff/ Respondent herein, sworn on 2/10/2024.
4. On 8/10/2024 Counsel agreed to file written submissions to the Application and the Court gave directions on the same. The parties duly submitted, and I have considered them. The Defendant/ Applicant filed his written submissions dated 25/10/2024 and the Plaintiff/Respondent filed his written submissions dated 11/11/2024.

Issues for Determination

5. I have considered the Applicant's Application for stay of execution of the Decree in this matter pending the hearing and determination of her intended Appeal.
6. The law concerning stay of execution pending Appeal is found in Order 42 Rule 6 of the [*Civil Procedure Rules*](#) which stipulates as follows:

“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.”

7. There are three conditions for granting of stay order pending Appeal under Order 42 Rule (6) (2) of the [*Civil Procedure Rules*](#) to which:
 - i. The Court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered.
 - ii. The Application is brought without undue delay and
 - iii. 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 by the Applicant.
8. I have considered the instant Application, the annexures thereto, the written submissions and the cited authorities together with the relevant provisions of law and found that the issue for determination before this Court is; whether the orders for stay of execution pending Appeal are merited.



Analysis and determination

Whether the orders for stay of execution pending Appeal are merited.

9. I have considered the Applicant's Application in view of the aforementioned conditions. The purpose of stay of execution is to preserve the substratum of the case. In the case of *Consolidated Marine -vs- Nampijja & Another*, Civil App.No.93 of 1989 (Nairobi), the Court held that: -

“The purpose of the Application for stay of execution pending Appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of Appeal are safeguarded and the Appeal if successful is not rendered nugatory.”
10. The Courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the Act or in the interpretation of any of its provisions. According to Section 1A (2):

“The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective.”
11. While under Section 1B some of the aims of the said objective are:-

“The just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”
12. It therefore follows that all the pre-overriding objective decisions must now be looked at in the light of the said provisions. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice.
13. On the first condition of proving that substantial loss may result unless stay order is made, Applicant has submitted that he has been residing in the said property since 1984 to date when it was acquired by his grandfather and father under whom the Plaintiffs sued. That the Plaintiffs and the Defendant resided in the said property as family home until 2007 when the Plaintiffs relocated abroad following the demise of their father and husband respectively leaving the Defendant and his family residing there. The Plaintiffs reside in Australia and United Kingdom and will suffer no loss or prejudice if stay orders were granted.
14. That the Defendant stands to suffer great substantial loss since he will lose the only home he has known for the last 40 years whereby he currently resides with his wife and three daughters. Should his Appeal be successful then the whole process will be rendered nugatory.
15. That the Defendant has tried to approach the Respondents who are his birth mother and brothers but they have refused to talk to him and that currently the Defendant/Applicant has no resources to rent alternative residence for his family and storage for his trade machines. If the stay is not granted he will be homeless and jobless.
16. The Plaintiff/Respondent have drafted and shared the Decree for sealing and execution is imminent. The Defendant/Applicant stated that he will abide by any conditions that the Court may impose.



17. On the second condition, there is no dispute that the impugned Judgment was delivered on 13/06/2023 wherein the Applicant sought for stay of execution vide the current Application dated 24/07/2024. I find that the said Application is brought without undue delay.
18. On the last condition, the Applicant contended that he is willing to abide by any condition that the Honorable Court may impose. Provide such security for the performance of the Decree as the Court may direct but taking into account that she is a jobless widow. However, the Plaintiff/Respondent avers that the Applicant has not offered any security for the due performance of the Decree. That the Honourable Court already made its orders by allowing the 1st Defendant 30 days' stay of execution to enable her to vacate the suit property and the instant Application is asking the Court to sit on its own Appeal.
19. Despite the above contention by the Respondent, I opine that the Court has discretion to order that security be furnished in any case where it thinks fit.
20. In the foregoing the Court finds that the Defendant/Applicant has demonstrated a reasonable likelihood of loss if stay is not granted. The Plaintiff/Respondent on the other hand does not stand to suffer any loss if stay is granted. This effect the Court orders as follows:
 - i. The Application dated 24/07/2024 is allowed in terms of Prayers (2) and (3).
 - ii. The Defendant/Applicant shall deposit Kshs. 100,000.00 (Kenya Shillings One Hundred Thousand Only) in Court as security for the due performance of the Decree within thirty (30) days from the date of this Ruling.
 - iii. Failure to comply with Order (b) hereinabove, Order (a) hereinabove shall automatically lapse.
 - iv. That the Defendant/Applicant shall within sixty (60) days from the date of this Ruling compile, file and serve upon the Respondent a complete Record of Appeal.
 - v. There shall be no costs.
21. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 14TH DAY OF MAY 2025
VIA MICROSOFT TEAMS.**

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MOGENI J

JUDGE

In the presence of:

Ms. Muriuki for the Plaintiffs

Mr. Muchiri holding brief for Mr. Koech for the Defendant

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

