



REPUBLIC OF KENYA



**Njoroge & another v Nganga & another (Environment and Land Appeal  
E030 of 2023) [2025] KEELC 4913 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4913 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E030 OF 2023**

**JM ONYANGO, J**

**JUNE 30, 2025**

**BETWEEN**

**MICHAEL KIMANI NJOROGE ..... 1<sup>ST</sup> APPELLANT**

**LUCIA WANJIKU NJOROGE ..... 2<sup>ND</sup> APPELLANT**

**AND**

**TERESIA NJUGUINI NGANGA ..... 1<sup>ST</sup> RESPONDENT**

**BERITA WANGUI KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The court was moved vide a Notice of Motion dated 17th April 2024 supported by the Affidavit of Michael Kimani Njoroge sworn on even date, under sections 1A,1B, 3A and 79G of the [Civil Procedure Act](#) and Article 159 (2) (d) of [the Constitution](#) of Kenya seeking the following Orders:
  1. Spent.
  2. Spent.
  3. That stay of execution of the judgment and decree in Kiambu-MCELC No. 22 of 2018 (Teresia Njuguna Muthoni & Another v Michael Kimani Njoroge & Another) be granted pending hearing and determination of Civil Appeal No. E030 of 2023.
4. That the costs of this application be provided for.
2. The Appellants/Applicants contend that the Respondents, who were the 1st and 2nd Plaintiffs at the trial court, obtained judgment in their favour on 23rd August, 2023 in the following terms:
  - a) That the defendants are to evict the suit property and accord vacant possession within 240 days of this judgment, and the process be carried out with the scrutiny of police officers from the area upon lapse of the days.



- b) That the plaintiffs are awarded Kshs 800,000 as damages for trespass to land, costs of the suit and interest accruing thereon.
3. They depone that they were dissatisfied with the said judgment, hence they filed this appeal through M/s Maina Makome & Company Advocates. They state that sometime in March 2024, the said firm directed them to seek alternative legal representation. They add that the delay in filing and or seeking orders for stay of execution in due time was not their fault, given that they relied on the professional representation, advice and/or direction of their previous advocates.
  4. It is their position that this appeal has high chances of success. They contend that this application has been brought at the earliest opportunity and without undue delay. They are apprehensive that unless orders of stay of execution are granted, the Respondents will proceed with execution, causing them to lose the suit property and as a result, render the appeal nugatory.
  5. The application was opposed by the Respondents through Grounds of Opposition dated 3rd June 2024. It is their position that the Application as filed is misplaced, incompetent, misconceived and purely meant to delay the cause of justice and the execution of the Judgment delivered by the trial court, hence it ought to be struck out with costs.
  6. The Respondents contend that the Application as filed lacks merit, and the same can only be attributed to ignorance of the law on the part of the Applicants.
  7. They depone that the Application is an afterthought, brought out of time in a deliberate attempt to delay the wheels of justice. They add that the Applicants have not offered any security for grant of the stay order. They urge this court to dismiss this application, given that it amounts to an abuse of the court process.
  8. The parties were directed to canvass the application by way of written submissions, and they all complied accordingly.

### **Issues for Determination**

9. Having examined the application, the grounds of opposition in response to the application and the parties' respective submissions, the only issue that emerges for determination is whether a stay of execution of judgment/ decree should be granted.
10. The court possesses the discretion to grant a stay of execution of a decree pending appeal under Order 42 Rule 6 of the Civil Procedure Rules, but this discretion must be exercised with careful consideration and fairness.
11. Order 42 Rule 6 of the Civil Procedure Rules, stipulates that:
  - “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 Applicants 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 Applicants”.

12. The fulfilment of the above-mentioned conditions is not merely procedural but essential to balancing the interests of both parties. The court must diligently assess the evidence of substantial loss and the timeliness of the application, alongside the provision of security, to ensure that the stay is granted only in deserving cases.
13. The first consideration is to determine whether the Applicants stand to suffer substantial loss in case the stay is not granted. It has been submitted for the Applicants that they are at risk of losing the suit property which has been their home since 2004. The Applicants have urged the court to be guided by the decision in *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] eKLR where the court pronounced itself in the following terms:
- “The issue of substantial loss is the most important consideration in an application for stay of execution. The applicant must show that, unless the order is made, he will suffer loss that cannot be compensated by damages.”
14. I find that losing a home that one has been in occupation of for over ten years amounts to substantial loss because of the sentimental value that one holds over their home. I find that the Applicants have established the first requirement under Order 42 Rule 6.
15. Regarding filing the application in time, judgment at the trial court was delivered on 23rd August 2023. The Applicants were ordered to give vacant possession of the suit property within 240 days from the date of the judgment. This application was filed on 17th April 2024, right when the 240 days were about to lapse. The explanation given by the Applicants for the delay in filing their application is that they relied on the advice of their previous advocates on record who later on informed them that they were not willing to continue representing them in the matter. However, it is not clear when the said advocates ceased representing them. Nonetheless, this court will give the Applicants the benefit of doubt and assume that this application was filed at the earliest moment after their previous advocates ceased represent them.
16. On the issue of security, the Respondents have faulted the Applicants for failing to offer the same. In response it has been submitted for the Applicants that the Respondents have not filed an Affidavit of Means to confirm their financial status thus there is a risk of them failing to compensate the Applicants should the appeal succeed. This court is of the opinion that in order for it to grant a stay of execution order to the Applicants, they must provide security for the due performance of the decree in the event this appeal fails.
17. Consequently, the application dated 17th April 2024 is allowed in the following terms:
- i. That a stay of execution of the judgment and decree in *Kiambu-MCELC No. 22 of 2018 (Teresia Njuguna Muthoni & Another v Michael Kimani Njoroge & Another)* is hereby granted pending hearing and determination of this Appeal.



- ii. The Appellants shall deposit Ksh 800,000 as security in this court within 14 days, failure to which this order shall automatically lapse.
- iii. That the costs of this application shall be in the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025.**

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**J. M ONYANGO**

**JUDGE**

In the presence of:

Miss Kadenge for the Applicant

No appearance for the Respondent

Court Assistant: Hinga

