



**Zabedi v Ngome (Environment and Land Appeal E018 of 2024)
[2025] KEELC 5096 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E018 OF 2024**

**A NYUKURI, J
JUNE 30, 2025**

BETWEEN

ZABLON LIPEYA ZABEDI APPELLANT

AND

VICTOR MATANDA NGOME RESPONDENT

RULING

1. Before court is an application by way of summons dated 12th November, 2024 filed by the appellant seeking the following orders;
 - a. That the application listed for hearing on 26th November, 2024 as MCELC E002/2022 be stopped “marked ZI 015”.
 - b. That the Principal Magistrate court Butali be restricted from hearing any applications in relation to ELC No. E002 of 2022.
 - c. That any application and orders made before the date of deciding this orders be (quashed) rendered void because they were made with criminal intention.
 - d. That any future applications in relation to ELC E002/2022 or MCELC E002/2022 be referred to the High court of Kenya at Kakamega Land and Environment court 2.
 - e. That the plaintiff/his agents/relatives be restricted from accessing parcel Kak/Lum/6313 pending the conclusion of appeal E18 of 2024.
 - f. That the Lugari Land Control Board/the district surveyor and the district land registrar be restricted from transacting any documents in relation to land parcel Kak/Lum/6313 until when the appeal is heard and concluded.



- g. That if any title deed has been processed in respect to land parcel Kak/Lum/6313 then it be cancelled with immediate effect for the sake of my security and end to justice.
 - h. That the Director of criminal investigation and the Director of Public Prosecution at the headquarters of this respective directorates be ordered to reconcile “DC10 Lugari Inquiry File No. 3 of 2020” as one file and further present it to Kakamega Land and Environment Court 2 on the hearing date of appeal No. E18 OF 2024 through DCIO Lugari.
 - i. That the file appeal No. E18 of 2024 be treated as sensitive.
 - j. That the OCS Lumakanda to make sure that my family is safe and back to their home without harassment from the plaintiff and his agents.
 - k. That the court to order the cancellation of the new numbers 7709 and 7710 as per the new Green card and maintain the original number Kak/Lum/6313 for the sake of my security and end to justice and hence the new Green card be cancelled for the sake of my security and the security of my family.
 - l. That the Principal Magistrate (Mr. Reuben Kipngeno) has been listed as a suspect on inquiry file No. 3 of 2020 and he cannot be fair in any hearing in relation to ELC E002/2022.
 - m. That the Principal Magistrate court Butali be compelled to process the proceedings immediately with the original file ELC E002 of 2022 and present them to the High court of Kenya at Kakamega Land and Environment court 2 within 2 weeks from the day these summons are granted.
 - n. That the costs of this application be provided for.
2. The application is supported by the applicant’s affidavit sworn on 13th November, 2024. Although the appellant made many averments most of which were unintelligible but the court was able to gather that his case is that he believes that the trial court in Butali will not deliver justice in regard to Butali MC ELC No. E002 of 2022. According to the appellant, the respondent has secretly removed a caution on the suit property to pave way for issuance of a title deed, which if allowed would mean that the Principal Magistrate at Butali and the Office of Director of Public Prosecutions Kakamega would have accomplished their mission since “they were paid by the plaintiff”. He insisted that once the respondent obtains title, he will “look for ways to kill” him before the conclusion of the appeal because the respondent has no evidence to favour him in the appeal. He stated that the Office of Public Prosecution Kakamega had used duress to force the DCIO Lugari to split inquiry file No. 3 of 2020 into more files to weaken the evidence in the matter.
3. The application was not opposed.

Analysis and determination

- 4. No legal provisions were cited as being the basis of the application, but it appears that among the prayers sought the appellant is seeking stay of execution pending appeal; injunction against the trial court from hearing applications filed in Butali CMC ELC No. 2 of 2022; injunction against the respondent; orders against and directing the DCIO, ODPP and OCS Lumakanda, the Principal magistrate Butali, the Land Control Board Lugari, the District Surveyor and Land Registrar to do certain acts.
- 5. Order 42 Rule 6 (2) and (6) of the Civil Procedure Rules provides for the jurisdiction of the court to grant orders of stay of execution and injunction pending appeal as follows;



Stay in case of appeal [Order 42, rule 6]

- (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.

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6. Notwithstanding anything contained in subrule 1 of this Rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.

6. Therefore, where it is demonstrated that there is substantial loss and that the appeal raises triable issues, stay and injunction pending appeal may be issued.

7. Essentially, imminent execution cannot in itself be a basis for grant of stay of execution pending appeal, as execution is a lawful process that follows grant of an order, judgment or decree by a court. Therefore, for an applicant to succeed in seeking stay pending appeal, they must demonstrate that they stand to suffer substantial loss if stay is not granted; that they have sought for stay without unreasonable delay and show willingness to provide security for the due performance of the decree that may issue against them.

8. The Court of Appeal enunciated principles to be considered in determining whether to grant or refuse stay of execution pending appeal in *Butt vs Rent Restriction Tribunal* [1979]KLR as follows:

“ a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.

b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge’s discretion.



- c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
 - d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.
9. Execution is a legal process which should not be hampered, without lawful justification. In the case of *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] eKLR, expressed itself thus:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo Because such loss would render the appeal nugatory.”

10. Having considered the material placed before me, there is no evidence to demonstrate that the appellant shall suffer substantial loss if stay of execution is not granted. In addition, the appellant has not demonstrated that he has an arguable appeal upon which an injunction should issue. What the appellant has done is to make serious but unsubstantiated allegations against the aforesaid public officers, including the Principal Magistrate at Butali and the ODPP claiming that they were paid by the plaintiff. No evidence was presented to support the same. In addition, the ODPP and DCIO are independent offices which are mandated to act as per *the Constitution* and their statutory mandate. No justification or basis has been placed before this court to warrant its intervention in the exercise of their lawful mandate.
11. The appellant apart from making serious and unsubstantiated allegations, knowing too well that the persons he has accused of being paid by the plaintiff are not parties herein and have no right of reply has not demonstrated that he stands to suffer irreparable loss if the orders sought are not granted. Therefore, the appellant’s prayer for injunction against the respondent and his prayers against the public officers named in the application are devoid of merit.
12. In the premises, I find and hold that the application dated 12th November 2024 lacks merit and the same is hereby dismissed with no order as to costs.
13. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 30TH DAY OF JUNE, 2025



A. NYUKURI

JUDGE

In the presence of;

Mr. Zablon Lipeya Zabedi the appellant in person.

No appearance for the respondent

Court Assistant: M. Nguyai

