



REPUBLIC OF KENYA



**Koimett v State Law Office & 3 others (Environment and Land Judicial Review  
Case E001 of 2025) [2025] KEELC 4810 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4810 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2025**

**A OMBWAYO, J  
JUNE 26, 2025**

**BETWEEN**

**ESAO KOIMETT ..... PLAINTIFF**

**AND**

**STATE LAW OFFICE ..... 1<sup>ST</sup> DEFENDANT**

**CABINET SECRETARY INTERIOR AND CO-ORDINATION OF NATIONAL  
GOVERNMENT & 2 OTHERS & 2 OTHERS & 2 OTHERS .... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Brief Facts**

1. The Plaintiff/Applicant filed the instant application dated 28th April, 2025 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That this Honorable Court be pleased to grant a stay of execution of the judgment and orders of the Environment and Land Court of Kenya at Nakuru (Hon. Justice Antony O. Ombwayo) delivered on electronically on 28th March 2025, pending the hearing and determination of the intended appeal.
  4. That the Honorable court be pleased to freeze/halt/stay the execution, enforcement and implementation of Ministers Decisions concerning land adjudication parcels 179, 180, and 181 Aram Kindonin.
  5. That Costs of this application be provided for.



2. The Application was based on grounds set out and supported by the Affidavit of Esao Koimett the Applicant. He stated that the 3rd Respondent moved swiftly to execute the decisions of the Minister concerning land adjudication parcels 179, 180, and 181 Aram Kindonin by repeatedly patrolling the parcels using official county government vehicles.
3. He further stated that Sorti Hills Conservancy has vegetation comprised of Sandalwood which is listed as an endangered species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). He stated that opening the conservancy to the public will without a doubt lead to illegal harvesting and smuggling of sandalwood. He stated that the Respondents or its appointed agents will remove him and his extended family from their ancestral homeland should this court not intervene.
4. He stated that unless this Honourable Court grants a stay of execution and further proceedings, he will suffer irreparable harm and the appeal will be rendered nugatory, as the Respondent is likely to proceed with execution. He added that the balance of convenience favoured the grant of the orders sought, as the Respondents will suffer no prejudice that cannot be compensated in costs if the appeal fails.
5. He went on to state that he lodged a notice of appeal and has since applied for certified copies of proceedings and certified judgment to enable him lodge an appeal.
6. In conclusion, he stated that it was in the interests of justice that a stay of execution and proceedings be granted, pending the hearing and determination of this application and intended appeal. He urged the court to allow the application.

## **Response**

7. The 3rd Respondent filed its grounds of opposition dated 7th May, 2025 on the following grounds:
  1. The Application is misconceived, incompetent and an abuse of the court process as it seeks orders for stay of execution of a judgment that is the nature of a negative order and incapable of being stayed save for the order for costs.
  2. The judgment of the Court dismissed the suit and as such, it did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus in the nature of a negative order which is incapable of execution and, thus, incapable of being stayed, save in respect of costs only. It is well settled law that negative orders are incapable of execution and thus cannot be stayed. This principle was enunciated by the Court of Appeal in *Co-operative Bank of Kenya Limited vs Banking Insurance & Finance Union (Kenya)* [2015] eKLR and has been restated severally, including in *Kenya Commercial Bank Limited vs Tamarind Meadows Limited & 7 Others* [2016] eKLR.
  3. Consequently, the prayers sought in the Application are legally untenable and premised on a fundamental misapprehension of the nature of the judgment.
  4. By the Applicant seeking stay of the enforcement and implementation of the decision of the Cabinet Secretary, Ministry of Lands, this Court is being invited to sit on Appeal on its own decision when it is clearly functus officio.
  5. Be that as it may, the Application does not meet the threshold for grant of the orders sought. The Applicant has not particularly demonstrated any substantial loss that may result if the orders sought are not granted.
  6. Consequently, the Application should be dismissed with costs. Submissions



8. Counsel for the Applicant filed his submissions dated 15th May, 2025 where he gave a background of the case and identified two issues for determination. The first issue was whether the Applicant has satisfied the legal threshold for grant of stay of execution of a judgment arising from a judicial review application. He submits that while the general rule is that negative orders cannot be stayed, exceptions exist, particularly when constitutional rights are involved or when the applicant can demonstrate that they meet the criteria for granting a stay. He relied on the case of *Judicial Service Commission V Speaker of the National Assembly & Another* [2013] eKLR and *Butt V Rent Restriction Tribunal* [1982] KLR 417. He submits that the application was filed within reasonable time following the delivery of the judgment on 28th March 2025, that the Applicant and an extended family of over 50 persons face imminent eviction from ancestral land, loss of permanent homes, and destruction of a community-led conservation initiative – Sorti Hills Conservancy. He added that the Applicant is willing to abide by any conditions the court may impose.
9. The second issue was whether the court ought to halt enforcement of the Minister’s decision to prevent violation of constitutional rights, including the right to property, fair hearing, and human dignity. He argues that public interest in preserving such ecological efforts is high and the court must weigh this aspect in granting equitable relief. He cited Article 42 & 69 of *the Constitution*.
10. He further submits that the Respondents will not suffer prejudice that cannot be compensated by costs or through legal process if the stay is granted. He added that on the other hand, the Applicant stands to suffer irreversible loss and infringement of rights under Articles 40, 42, and 47. He relied on the case of *Patrick Musimba V National Land Commission & 4 Others* [2016] eKLR).
11. Counsel for the 3rd Respondent on the other hand filed his submissions dated 16th May, 2025 where he identified two issues for determination. The first issue being whether this court should grant orders of stay of execution. He submits that this court in its judgment, dismissed the Applicant’s suit for lack of merit. He further submits that the resultant decree was a negative order, which is incapable of being stayed. He also submits that the court did not order any of the parties to do anything or refrain from doing anything or to pay any sums. He relied on the Court of Appeal case in *Co-operative Bank of Kenya Limited V Banking Insurance & Finance Union (Kenya)* [2015] eKLR and *Kenya Commercial Bank Limited V Tamarind Meadows Limited & 7 Others* [2016] eKLR.
12. He further submits that this court cannot stay the implementation of the decision of the Cabinet Secretary, Ministry of Lands as the same would amount to the court sitting on appeal against its own decision. It was his submission that the court dismissed the claim after considering its merits and failing to find fault in the process leading to the making of the decision by the Cabinet Secretary, Ministry of Land. He adds that the court is therefore *functus officio*. He relied on the Supreme Court case of *Raila Odinga & 2 Others vs. Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR.
13. On the second issue of costs, he argues that having submitted that the application is incompetent, misconceived, and does not satisfy the threshold for the grant of the orders sought, he urged that court to grant costs to the Respondents. He cited the case of *Peter Muriuki Ngure v Equity Bank (K) Ltd* [2018] eKLR.

### **Analysis and Determination**

14. This court has considered the application and the main issue for determination is whether the Applicant is entitled to stay orders pending appeal. It is not in dispute that the Applicant is seeking to stay a dismissal order of a judicial review application made by this court on 28th March, 2025. It is clear that this order in its nature is a negative order incapable of execution.



15. In the case of *Gitundu V Wathuku* [2022] KECA 959 (KLR), the court held as follows:

"...in this case the Notice of appeal is against the learned Judge's decision striking out the applicant's application on grounds that it was *res judicata*. There is no Notice of Appeal before us with regard to the Chief magistrate's decree. We do not, therefore have jurisdiction to grant the orders sought in the application. Additionally, even if we had the requisite jurisdiction, this Court has said time without number that stay orders cannot issue in respect of negative orders, where the court has not ordered any of the parties to perform any task. In this case, the learned Judge merely struck out the applicant's application. The Court cannot stay that striking out."

16. Further, in the case of *Kaushik Panchamatia, Sunrise Hauliers Limited, Rishi Hauliers Limited & Dunga Wholesalers Limited v Prime Bank Limited & Garam Investment Auctioneers* (Civil Appeal 72 of 2020) [2020] KECA 418 (KLR) (7 August 2020) (Ruling) the court held as follows:

"...that a negative order is incapable of being stayed because there is nothing to stay. It therefore, follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed for by applicants."

17. This court had already rendered itself by dismissing the application to commence judicial review and while in agreement with the 3rd Respondent, this court is therefore *functus officio* to make any further orders. The upshot of the foregoing is that the application dated 28th April, 2025 is hereby dismissed with costs. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

**DATE: 2025-06-26 13:08:05**

