



**Korir v Kangogo & another (Environment and Land Appeal
E009 of 2025) [2025] KEELC 4812 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4812 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E009 OF 2025**

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

BETWEEN

ROBERT KIPKOECH KORIR APPELLANT

AND

DANIEL KANGOGO 1ST RESPONDENT

GLADYS CHEBET 2ND RESPONDENT

RULING

1. This ruling is in respect of the Appellants Notice of Motion application dated 25th March, 2025 which sought the following orders;
 - a. Spent.
 - b. Spent.
 - c. That the Honourable Court be pleased to stay the execution of the orders contained in the Judgement of the Chief Magistrates court at Molo, ELC E 009 OF 2023, dated 14th February 2025, and do maintain the status quo pertaining before the 14th February 2025, pending the hearing and determination of this appeal.
 - d. That the Honourable court do grant any order it deems fit.
 - e. That costs of the application be provided for.
2. The grounds on the face of the application are that judgement was delivered on 14th February 2025 in the absence of the Appellant and his advocate on record. That being aggrieved by the said judgement, the Appellant filed an appeal.
3. The application was supported by the affidavit of Robert Kipkoech Korir sworn on 25th March, 2025. He stated that the court delivered its judgement in Molo ELC NO. 009 of 2023, on the 14th



February 2025, which judgement was delivered virtually. He further stated that consequently no stay of execution of the said judgement was granted to the Appellant.

4. He went on to state that he had filed a memorandum of appeal dated 28th February 2025, against the whole judgement. He stated that he was apprehensive that the 2nd Respondent will proceed with the execution of the said judgement any time, subdivide the suit land and have it registered in her name and possibly transfer the same to a third party.
5. He stated that if the stay orders sought are not granted, the Respondent will execute the judgement thus rendering the appeal nugatory as there are high chances of it succeeding.
6. In conclusion, he stated that it was in the interest of natural justice and right to proprietary rights that he is granted the stay orders Response
7. In response, the 2nd Respondent filed her Replying Affidavit sworn on 29th April, 2025 where she averred that the application was an abuse of the court process as it was founded on false grounds. She averred that sometimes in the year 2006, she bought the suit land parcel Nakuru/Shukwa/521, with the aid of her sister Alice Chelagat Too, as her financier.
8. She further averred that she registered the said land parcel, in the Appellant's name to hold in trust for their children, and herself since they were living together, as husband and wife. She averred that the trial court upon hearing the testimonies and going through the evidence rendered a decision subdividing the suit property into two as per the judgement, which she was in occupation of the three acres awarded by the court.
9. She averred that the Appellant has not fulfilled any of the conditions for stay of execution pending appeal thus not deserving of the prayers sought. She also averred that the Appellant has already sold the said land parcel and cannot claim any proprietary rights.

Submissions

10. Counsel for the 2nd Respondent filed his submissions dated 28th May, 2025 where he identified three issues for determination. The first issue was whether the appeal was whether the appeal was competent. While submitting in the negative, he relied on Rule 40 of the Practice Directions which provided for the procedure of appeals from subordinate courts and Local Tribunals. He submits that an appeal shall be in the form of Record of Appeal and that in the instant case, no record of Appeal has been filed therefore the application is not properly before the Court.
11. The second issue was whether the Appellant's application of the 25th March, 2025, is merited. He relied on Order 42 rule 6 of the *Civil Procedure Rules* and the case of *Amboga V Ndeithi & 2 others* (Environment and Land Appeal E016 of 2023) [2024] KEELC 1335 (KLR) and *Jaber Mohsen Ali & another V Priscillah Boit & another* [2014] KEELC 132 (KLR). He submits that the Appellant has failed to meet the required threshold for grant of stay of execution orders pending appeal. He further submits that application is overtaken by events. The status obtaining before the judgement has changed by virtue of the land having been sold.
12. It was his submission that the Appellant will not suffer any substantial loss as he has not stated what loss he will suffer that cannot be compensated by way of damages should the appeal succeed. He argues that from the Memorandum of Appeal, the chances of success of the appeal is low since it's not arguable.
13. He also submits that the Appellant has not only failed to give security, but has also failed to offer the same.



Analysis and determination

14. The Court has considered the application and the main issue for determination is whether orders of stay of execution pending appeal should issue.
15. Order 42 Rule 6 (1)(2) of the [Civil Procedure Rules](#) provides as follows;
 - “(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.
16. In *RWW V EKW* [2019] eKLR the court held as follows:

“...the purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
17. For this court to grant an order of stay of execution, the Appellant must demonstrate that he filed the application under consideration without unreasonable delay, that he will suffer substantial loss if the orders sought are not granted and that he is willing to deposit security for costs. It is also noteworthy that the court should endeavor to balance the interests of both the successful party in litigation so as not to unnecessarily bar them from enjoying the fruits of judgment and that of the Appellant whose appeal may succeed and be rendered nugatory if stay of execution is not granted.
18. On the issue of delay, a perusal of the court record shows that judgement in the matter was delivered on 14th February, 2025 and the Appellant filed a Memorandum of Appeal filed on 5th March, 2025. It is this court’s view that the same was within the statutory time provided to file an appeal. It is noteworthy that the present application was filed on 25th March, 2025 translating to a period of about one month 10 days from the date of judgment. This court is of the view that that the period does not amount to inordinate delay.
19. The Appellant has to also demonstrate that unless the court grants stay of execution orders pending appeal, he stands to suffer substantial loss. The Appellant argues that the 2nd Respondent will proceed with the execution of the said judgement any time and possibly sell the land to third parties. The 2nd Respondent on the other hand contends that the application was overtaken by events since the land was already sold. It is this court’s view that since there is no evidence that execution had commenced, the Appellant has failed to demonstrate the substantial loss he would suffer if stay is not granted.



20. On the issue of security of costs, although the Appellant has not expressed his willingness to offer security of costs, this court shall exercise its discretion regarding the security of costs to be offered. In the case of *Siegfried Busch vs MCSK* [2013] eKLR, the court held as follows:

“A superior court to which an application has been made must recognize and acknowledge the possibility that its decision for refusal to grant a stay of execution could be reversed on appeal. It would be best in those circumstances to preserve the status quo so as not to render an appeal nugatory. Even in doing so, the court should weigh this against the success of a litigant who should not be deprived of the fruits of his judgment...”

21. This court is of the view that grant of stay remains a discretionary order that must consider the fact that the court ought not to make a practice of denying a successful litigant the fruits of their judgment.

22. In the upshot, this court shall exercise its discretion and order of stay of execution of this court’s judgement delivered on 14th February, 2025 on the following conditions;

- a. The Appellant to deposit a sum of Kshs. 200,000/= as security for costs in a fixed joint interest earning account in the names of both counsel for the parties within 14 days from the date of this ruling.
- b. The Appellant shall compile, file and serve a record of appeal within 60 days and move the Court appropriately towards the finalization of this Appeal within 180 days from the date of this ruling.

23. In the event the Appellant fails to abide by any of the above stated two conditions within the fixed time lines there will be an automatic lapse of the stay of execution herein irrespective of whether or not one condition shall have been met earlier than the failure of the latter.

24. Each party shall bear its own costs to the application. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

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DATE: 2025-06-26 16:20:07

