



**Mumo alias Mbisi Daniel v Daniel and another (Sued as the Personal Representatives of Daniel Mulwa Kavithi) & 4 others (Environment and Land Case 7 of 2015 & 45 of 2018 (Consolidated)) [2025] KEELC 4726 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4726 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND CASE 7 OF 2015 & 45 OF 2018 (CONSOLIDATED)**  
**NA MATHEKA, J**  
**JUNE 24, 2025**

**BETWEEN**

**FREIZER MUMO ALIAS MBISI DANIEL ..... PLAINTIFF**

**AND**

**JONAH KAVITHI DANIEL AND MAGDALENE WAYUA DANIEL  
(SUED AS THE PERSONAL REPRESENTATIVES OF DANIEL MULWA  
KAVITHI) ..... 1<sup>ST</sup> DEFENDANT**  
**MAGDALENE WAYUA KAVITHI ..... 2<sup>ND</sup> DEFENDANT**  
**LUKENYA RANCHING SOCIETY LIMITED ..... 3<sup>RD</sup> DEFENDANT**  
**COUNTY LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT AND LAND CASE 45 OF 2018**

**BETWEEN**

**FREIZER MUMO ALIAS MBISI DANIEL ..... PLAINTIFF**

**AND**

**JONAH KAVITHI DANIEL AND MAGDALENE WAYUA DANIEL  
(SUED AS THE PERSONAL REPRESENTATIVES OF DANIEL MULWA  
KAVITHI) ..... 1<sup>ST</sup> DEFENDANT**  
**MAGDALENE WAYUA KAVITHI ..... 2<sup>ND</sup> DEFENDANT**  
**LUKENYA RANCHING SOCIETY LIMITED ..... 3<sup>RD</sup> DEFENDANT**  
**COUNTY LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**



## RULING

1. The application is dated 26<sup>th</sup> September 2024 and is brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 22 Rule 22[1] and [3], Order 22 Rule 25, Order 51 Rule 1, Order 21 Rule 12 of the Civil Procedure Rules seeking the following orders;
  1. That this application be certified as urgent and the same be heard ex-parte at first instance.
  2. That there be a stay of execution of the Judgment and Decree delivered on 29<sup>th</sup> April, 2024 by Lady Justice Christine Ochieng, pending the hearing and determination of the intended appeal to the Court of Appeal.
  3. That pending the hearing and determination of the intended appeal, a temporary persons acting under their instructions from selling, transferring, charging, distributing, or otherwise dealing with parcels of land known as Mavoko Town Block 3/2261, 2563, 1306, 1493, 1311, 2364 and 1498, or any portion thereof.
  4. That cost of this application be provided for.
2. It is based on the annexed affidavit of Magdalene Wayua Kavithi and grounds that the Honourable Court delivered its Judgment in the consolidated ELC Case No. 7 of 2015 and ELC Case No. 45 of 2018 on the 29<sup>th</sup> of April, 2024, ordering that various parcel of land registered in the name of the late Daniel Mulwa Kavithi and the 2<sup>nd</sup> Defendant be transferred to the Plaintiff. That the Applicant, being aggrieved by the Judgment of the Honourable Court, has filed a Notice of Appeal and intends to challenge the said Judgment on grounds that the decision was contrary to the weight of evidence and misapprehended the law on the ownership of the disputed parcels of land. That the Applicant has an arguable appeal with a high chance of success, as the grounds of appeal will raise fundamental issues on ownership rights and the legality of the transfers made by the deceased, Daniel Mulwa Kavithi. That if stay of execution and temporary injunction are not granted, the Plaintiff will proceed to execute the Decree, leading to irreparable harm and loss to the Applicant, who risks being dispossessed of land that rightfully belongs to the estate of the deceased and the 2<sup>nd</sup> Defendant. That the Plaintiff or their agents may distribute or dispose of the suit properties, which would permanently alter the status quo, making it difficult or impossible to reverse the situation if the appeal is successful.
3. That the appeal will be rendered nugatory if stay of execution and a temporary injunction are not granted, as the Applicant will have no recourse to the subject matter of the suit once the titles are cancelled and transferred to the Plaintiff or third parties. That the Applicant is willing to abide by the reasonable conditions that this Honourable Court may impose for the granting of the stay of execution and temporary injunction.
4. This court has considered the application and the submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 [1] of the Civil Procedure Rules as follows;

“No appeal or a 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 an application being made, to consider such application and to make such orders thereon as may to it seem just, 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 the orders set aside.”

5. Order 42, rule 6 states:

“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.”

6. The appellants need to satisfy the Court on the following conditions before they can be granted the stay orders:

1. Substantial loss may result to the applicant unless the order is made.
2. The application has been made without unreasonable delay, and
3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.

7. The principles governing the exercise of the court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of *Reliance Bank Ltd [In Liquidation] v Norlake Investments Ltd – Civil Appl. No. Nai. 93/02 [UR]*, thus;

“Hitherto, this Court has consistently maintained that for an application under rule 5[2] [b] to succeed, the applicant must satisfy the court on two matters, namely:-

1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”

8. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange v Richard Nyagaka Tongi & 2 Others eKLR* where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;

“.....The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”



9. In the case of Mohamed Salim T/A Choice Butchery v Nasserpuria Memon Jamat [2013] eKLR, the court stated that;

“That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right .....

10. We are further guided by the court’s decision in Carter & Sons Ltd v Deposit Protection Fund Board & 2 Others Civil Appeal No. 291 of 1997, at Page 4 as follows:

“.....the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . .the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.”

11. The respondent stated that there is nothing to stay as the decree has already been implemented. That there has been unreasonable delay as judgement was delivered on 29<sup>th</sup> April 2024 and this application was filed on 26<sup>th</sup> September 2024. That since the applicant had not lodged a counterclaim at the trial stage she is estopped from seeking injunctive orders at this stage. I concur with the respondents’ submissions and find that the applicant is guilty of laches judgement was delivered on 29<sup>th</sup> April 2024 and this application was filed on 26<sup>th</sup> September 2024. Secondly there is no draft memorandum attached to the application on the grounds of appeal to demonstrate that her appeal has high chances of success. Execution has already been done and decree satisfied hence there is nothing to stay. Granting stay in this matter would lead to further delay and inconvenience to the respondent who requires to enjoy the fruits of his judgment. It is trite law that litigation must come to an end and thus it would be more prejudicial to the respondent if the orders of stay are granted.

12. Further, I am not persuaded that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. I find that the applicant has not fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is unmerited and I dismiss it with costs.

13. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF JUNE 2025.**

**N.A. MATHEKA**

**JUDGE**

