



REPUBLIC OF KENYA



KENYA LAW
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Vipingo Development Limited & another v Kai & 6 others (Environment and Land Appeal E006 of 2025) [2025] KEELC 4705 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4705 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E006 OF 2025
FM NJOROGE, J
JUNE 24, 2025

BETWEEN

VIPINGO DEVELOPMENT LIMITED 1ST APPLICANT

LAKE GAS LIMITED 2ND APPLICANT

AND

JACKSON CHITENGELE KAI 1ST RESPONDENT

LINET TUMA MWAKAMSHA 2ND RESPONDENT

PETER YAA MANGI 3RD RESPONDENT

JOSEPH MALUSHS ABEDI 4TH RESPONDENT

PROJECT KENYA YOUTH ORGANIZATION 5TH RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 6TH
RESPONDENT**

THE COUNTY GOVERNMENT OF KILIFI 7TH RESPONDENT

RULING

1. The Court is called upon to determine a Notice of Motion application dated 4/3/2025, brought under Articles 48, 50(1), and 159(2)(d) of *the Constitution* of Kenya, Section 3A of the *Civil Procedure Act*, and Order 42 Rule 6(2) and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Applicants seek a stay of execution of the orders issued in the ruling delivered on 20/2/2025 by the National Environment Tribunal.
3. The application is supported by the affidavit of counsel Omweri Jairus Makora, sworn on even date, and is anchored on several grounds as set out in the motion.



4. The core grievance as contained in the application is that the Tribunal delivered a ruling on 20/2/2025 in respect of a contempt application dated 26/1/2025, filed by the 1st to 5th Respondents, without the said application having been served upon the Applicants. The Tribunal went ahead to find the directors of the Applicant companies in contempt and imposed a fine of KShs. 2,000,000/- payable within 30 days.
5. It is contended that the contempt application was never served, never heard, and never mentioned in the Tribunal's proceedings despite the main suit having been scheduled and heard on various occasions. They averred that this amounted to being condemned unheard, contrary to the right to fair administrative action under the Fair Administrative Action Act, and in breach of the right to a fair hearing.
6. The Applicants further state that they have since lodged an appeal against the ruling, which has high chances of success, and that they will suffer substantial loss and prejudice if the stay sought is not granted. The risk, in their view, is the potential enforcement of a punitive monetary sanction without having had a chance to be heard on the underlying application. Notably, no response was filed by the Respondents. The application therefore remains unopposed.

Analysis And Determination

7. The principles applicable to applications for stay of execution pending appeal are well settled under Order 42 Rule 6(2) of the Civil Procedure Rules. An applicant must satisfy the Court that:
 - i. Substantial loss may result unless the order is made;
 - ii. The application has been made without unreasonable delay; and
 - iii. Such security as the court may order for the due performance of the decree or order has been given.
8. On substantial loss, the Applicants have demonstrated that they risk being forced to pay a hefty fine of KShs. 2,000,000/- without having been served with or heard on the contempt application. The right to a fair hearing is a cardinal constitutional right and forms a central tenet of our justice system. A fine imposed through an alleged irregular process, if enforced before an appeal is heard, would occasion a significant injustice and defeat the ends of justice.
9. The application was filed promptly, just 12 days after the impugned ruling, thus satisfying the requirement of timeliness.
10. As for security, this Court is mindful that the sanction arises out of a contempt order rather than a typical land or contractual dispute. While the Applicants have not offered any specific security, the circumstances herein are exceptional. Since the underlying issue is the procedural fairness and legality of the impugned ruling, this Court finds that imposing security in this instance may not be appropriate at this stage. The Respondents' failure to respond or rebut any of the factual averments or legal arguments further lends weight to the Applicants' case.
11. In view of the foregoing, the Court finds merit in the application dated 4/3/2025 and allows the same as follows:
 - (a). There shall be a stay of execution of the orders issued by the National Environment Tribunal in the ruling dated 20/2/2025, pending the hearing and determination of the intended appeal;
 - (b). There shall be no order as to costs.



- (c). The record of appeal shall be filed and served on all parties and an affidavit of service shall be filed within 45 days from the date of this order in default of which the orders issued in (a) herein above shall automatically lapse.
- (d). The present appeal shall be mentioned for directions on 15/10/2025.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 24TH DAY OF JUNE 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

