



**Kaimugul v Kurui & another (Environment and Land Appeal
E007 of 2025) [2025] KEELC 4609 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E007 OF 2025**

EM WASHE, J

JUNE 18, 2025

BETWEEN

TAMUREI KOBILO KAIMUGUL APPELLANT

AND

KITUM WILLIAM KURUI 1ST RESPONDENT

CHEPKAITANY KAIMUGUL 2ND RESPONDENT

RULING

1. The Appellant (hereinafter referred to as “the Applicant”) filed a Notice of Motion dated 11.03.2025 (hereinafter referred to as “the present Application”) seeking the following Orders against the 1st and 2nd Respondents (hereinafter referred to as “the Respondents”); -
 - a. This Application be certified as urgent and the same be heard ex-parte in the 1st instance.
 - b. There be ex-parte Order of Stay of Execution of the Court’s Order issued in the Ruling delivered on the 05.02.2025 in Eldoret CMC ELC No. E065 of 2021 between Kitum William Kurui-Versus- Chepkeitany Kaimugul & Another pending the hearing and determination of this Application inter-parties.
 - c. There be Stay of Execution of the Court’s Orders issued in the Ruling delivered on the 05.02.2025 in Eldoret CMC ELC No. E.065 of 2021 pending the hearing and determination of the Appeal.
 - d. Costs be provided for.
2. The prayers sought hereinabove are premised on the grounds which have been pleaded in the body of the present Application as well as the Supporting Affidavit sworn by the Applicant on the 11.03.2025; -



- a. The Applicant is aggrieved by the Ruling of the Trial Court pronounced on the 05.02.2025 in the proceedings known as Eldoret CMC ELC No. E065 of 2025 between Kitum William Kurui-Versus- Chepkeitany Kaimugul & Another.
 - b. According to the Ruling by the Trial Court pronounced on the 05.02.2025, the County Surveyor was directed to excise 2 acres from the property known as LR.no.kaptagat Kongasis Block 1 / 4 (hereinafter referred to as “the suit property”) which belongs to the Applicant and Transfer the same to the 1st Respondent.
 - c. However, the Applicant herein who is the legal owner of the suit property was never a party to the proceedings known as Eldoret CMC ELC No. E065 of 2025 between Kitum William Kurui-Versus- Chepkeitany Kaimugul & Another.
 - d. Consequently, this Applicant sought this Court to issue a Stay of Execution of the Ruling pronounced on the 05.02.2025 in the proceedings known as Eldoret CMC ELC No. E065 of 2025 between Kitum William Kurui-Versus-Chepkeitany Kaimugul & Another pending the hearing and determination of the present Appeal.
 - e. The Applicant was of the view that if the Order for Stay of Execution of the Ruling pronounced on the 05.02.2025 is not granted, then her suit property will be excised and transferred to the 1st Respondent which action will result to substantial loss if not irreparable loss.
 - f. It was therefore the Applicant’s submission that the suit property should be preserved pending the hearing and determination of this Appeal so that the entire Appeal is not rendered nugatory.
 - g. Lastly, the Applicant stated that there would be no prejudice caused to the Respondents if the prayers sought herein are granted.
3. The present Application was duly served on the Respondents who opposed the same by filing a Replying Affidavit sworn by the 1st Respondent on the 14.03.2025 on the following grounds; -
- a. The present application and the substantive Appeal herein emanate from the proceedings known as Eldoret CMC Civil Suit No. E065 of 2025 and not Eldoret CMC ELC No. E065 of 2025 as alleged by the Applicant herein.
 - b. The Respondents stated that based on the above disclosure, any Appeal emanating from the Ruling pronounced on the 05.02.2025 in the proceedings known as Eldoret CMC Civil Suit No. E065 of 2025 should be preferred to the High Court which is the court with jurisdiction to hear and determine Commercial Disputes.
 - c. In essence, the Respondents submitted that this Court has no Jurisdiction to entertain and/or make any determinations regarding an Appeal from the proceedings emanating from Eldoret CMC Civil Suit No. E.065 of 2025.
 - d. The Respondents in a nutshell sought this Court to struck out both the present Application and the substantive Appeal.
 - e. Further to that, the Respondents stated that the Applicant had not demonstrated any loss that she is likely to suffer in the event the Orders sought herein would not be granted.
 - f. Lastly, the Respondents pointed out that the Applicant had not offered any security which is one of the conditions of granting an Order of Stay of Execution.



- g. In conclusion, the Respondents sought this Court to dismiss the present Appeal with costs.
4. The Replying Affidavit dated 14.03.2025 was duly served on the Applicant who in response filed a Supplementary Affidavit sworn by the Applicant on the 09.04.2025 in which he stated as follows; -
- a. The Applicant admitted that indeed there is a suit known as Eldoret CMC Civil Suit No. 065 of 2021 which is between Kitum William Kurui-Versus-Chepkeitany Kaimugul & Another and which related to a commercial dispute regarding a liquidated claim.
- b. The Applicant pleaded that he was not a party to the said proceedings known as Kitum William Kurui-Versus-Chepkeitany Kaimugul & Another.
- c. However, on the 03.02.2021, the parties therein recorded a Consent against the Defendant therein for a sum of KShs. 3,011,530/-.
- d. As the proceedings known as Eldoret CMC Civil Suit No. E065 of 2021 between Kitum William Kurui-versus-Chepkeitany Kaimugul & Another were on going, the Applicant also sued the Respondents through the proceedings known as Eldoret ELC OS No.9 of 2021 seeking ownership of the suit property through adverse possession.
- e. The Applicant after prosecuting the proceedings known as Eldoret ELC OS No. 9 of 2021 against the Respondents obtained a Judgement in his favour on the 25.10.2022 and subsequently thereafter, the suit property was transferred to him on the 23.09.2024 and a Title Deed issued thereof.
- f. The Respondents not being able to liquidate the said Consent Judgement recorded on the 03.02.2021 in the proceedings Eldoret CMC Civil Suit No. E065 of 2021 between Kitum William Kurui-Versus-Chepkeitany Kaimugul & Another filed an Application dated 23.08.2024 seeking to settle the said Consent Judgement by way of excising 2 acres from the suit property and transferring the same to the Plaintiff therein.
- g. The Applicant herein sought to participate in the said Application dated 23.08.2024 but the Court declined to consider his opposition because he was not a party to the suit and a Judgement had already been pronounced hence the Court was functus officio.
- h. Ultimately, the Trial Court in the proceedings known as Eldoret CMC Civil Suit No. E065 of 2021 between Kitum William Kurui-Versus-Chepkeitany Kaimugul & Another allowed the Application dated 23.08.2024 and Decreed that the County Surveyor Uasin Gishu do visit the suit property and excise 2 acres to be transferred to the Plaintiff herein.
- i. The Applicant pleaded that the issues relating to the two proceedings known as Eldoret CMC Civil Suit No. E065 of 2021 and Eldoret ELC OS No. 9 of 2021 are so intertwined between a commercial dispute and the ownership of the suit property and therefore this Court has jurisdiction to hear and determine the present Application and Appeal.
- j. However, in the event this Court is of the Considered option that it has no jurisdiction to hear and determine the present Application and Appeal, then it should exercise its powers and transfer the same to the High Court rather than struck out the same.
- k. The Applicant urged this Court to look at substantive Justice rather than technicalities and not dismiss the present application.
5. Upon service of the Supplementary Affidavit sworn on the 09.04.2025, the Court directed that the present Application would be canvassed by way of written submissions.



6. The Applicant duly filed his submissions dated 09.04.2025 in support of the present Application while the Respondents filed their submissions dated 15.04.2025 in opposition.

7. The Court has indeed looked at the present Application, the Replying Affidavit, the Supplementary Affidavit as well as the submissions herein and identified the following issues for determination.

Issue No. 1- In which proceedings was the ruling pronounced on the 23.08.2024 made?

Issue No. 2- Does this court have jurisdiction to hear & determine an appeal emanating from the proceedings in which the ruling dated 23.08.2024 was made?

Issue No.3- Is the Applicant entitled to an order for stay of execution of the Ruling pronounced on 23.08.2024?

Issue No. 4- Who bears the costs of the present Application?

8. The Court having identified the above issues for determination, the same will now be discussed herein below.

Issue No. 1- In which proceedings was the Ruling pronounced on the 23.08.2024 made?

9. The first issue for determination is to ascertain the proceedings in which the Ruling pronounced on the 05.02.2025 was made between the proceedings known as Eldoret CMC ELC No. E065 of 2021 and Eldoret CMC Civil Suit No. E065 of 2021.

10. According to the Memorandum of Appeal dated 27.02.2025 by the Applicant, the same reads as follows; -

Memorandum of Appeal

(Being Appeal against the Ruling delivered on the 5th February 2025 by Hon. P Ireri in Eldoret CMCC No. 065 of 2021 between Kitum William Kurui (Plaintiff)-Versus- Chepkeitany Kaimugui (Defendant) & Tamurei Kibilo Kaimugul (Interested Party)

11. In the present Application, the Applicant sought for an Order of Stay of Execution against the Ruling pronounced on the 05.02.2025 in the proceedings known as Eldoret CMC ELC No. E065 of 2021.

12. The Respondents in opposing the present Application stated that the Ruling pronounced on the 05.02.2025 which the Applicant is seeking an Order For Stay of Execution does not exist in the proceedings known as Eldoret CMC ELC no. E065 of 2021 but the proceedings known as Eldoret CMC Civil Suit No. 065 of 2021.

13. The Applicant in his Supplementary Affidavit admitted that indeed the Ruling pronounced on the 05.02.2025 was in the proceedings known as Eldoret CMC Civil Suit No. 065 of 2021.

14. Based on the above admission, it is this Court's finding that the Ruling pronounced on the 05.02.2025 was in the proceedings known as Eldoret CMC Civil Suit No.065 of 2021 and not Eldoret CMC ELC No. E065 of 2021.

Issue No. 2- Does this court have jurisdiction to hear & determine an appeal emanating from the proceedings in which the ruling dated 05.02.2025 was made?

15. This Court having made a finding that the Ruling pronounced on the 05.02.2025 was made in the file known as Eldoret CMC Civil Suit No. 065 of 2021, it is important to state that the said proceedings related to a Commercial dispute which was settled through the Consent Judgement pronounced on



the 25.10.2022 and the subsequent applications and Rulings deal with the execution of the Consent Judgement.

16. Consequently, the Court couched with the appropriate Jurisdiction to handle the proceedings, Rulings and/or Judgements emanating from the proceeding known as Eldoret CMC Civil Suit No. 065 of 2021 is the High Court of Kenya and not the Environment & Land Court.

Issue No.3- Is the applicant entitled to an order for stay of execution of the ruling pronounced on 05.02.2025?

17. The third issue for determination is whether or not the Applicant is entitled to a prayer for Stay of Execution of the Ruling pronounced on the 05.02.2025 pending the hearing and determination of the pending Appeal.
18. Based on Issue No.2 hereinabove, this Court does not have the jurisdiction to consider the merits and/or demerits of the present Application and will therefore not comment of the same.

Issue No. 4- Who bears the costs of the present Application?

19. On the issue of costs, the same will be dealt with upon determination of the present Application by the appropriate Court.

Conclusion

20. In conclusion, this Court makes the following Orders in determination of the Notice of Motion Application dated 11.03.2025; -
 - a. The Environment & Land Court does not have jurisdiction to hear and determine the present application and/or the appeal filed against the ruling pronounced on the 05.02.2025 in the proceeding known as Eldoret CMC Civil suit no. 065 of 2021.
 - b. The Memorandum of Appeal dated 27.02.2025 and the Notice of Motion dated 11.03.2025 be and are hereby transferred to the High Court sitting at Eldoret for hearing and determination.
 - c. This file will be placed before the presiding Judge of the High Court at Eldoret for further directions on the hearing and determination of both the Notice of Motion dated 11.03.2025 as well as the memorandum of appeal dated 27.02.2025 within 30 days from the date of this ruling.

DATED, SIGNED & DELIVERED Virtually at ELDORET ELC this 18TH DAY OF JUNE 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Advocates for the Applicant: Mr. Kipnyekwei

Advocates for the Respondent: Mr. Mogambi

