



REPUBLIC OF KENYA



KENYA LAW
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**Cheti v Ang'ang'a (Environment and Land Appeal E011 of 2025)
[2025] KEELC 4389 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4389 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND APPEAL E011 OF 2025**

**E ASATI, J
JUNE 12, 2025**

BETWEEN

HANNINGTONE TIMBUA CHETI APPELLANT

AND

LYDIA INYANGALA ANG'ANG'A RESPONDENT

(Being an appeal from the judgement and decision of the Hon. J. A Agonda (PM) in the original Vihiga ELC Case No E010 OF 2022 delivered on 27th February 2025)

RULING

1. The application before court for determination is the Notice of Motion date 13th March 2025 brought by the appellant under the provisions of Order 40 Rules 1, 2 & 3, Order 51 Rule 1 [Civil procedure Rules](#), sections 1A, & 3A of the [Civil Procedure Act](#) Cap 21 Laws of Kenya and Article 159 of the [Constitution of Kenya](#) 2010. The application seeks for orders that the honourable court be pleased to stay execution of the judgement and decree delivered by the Hon. J.A Agonda PM on the 27th February 2023 pending hearing and determination of the appeal and that costs of the application be provided for.
2. The application was supported by the averments in the Supporting Affidavit of the applicant on 18th March 2025 and the annexure thereto.
3. The application was opposed vide the contents of the Replying Affidavit sworn by the Respondent on 15th March 2025. The Respondents case is that the applicant is not deserving of the orders sought as he does not have any proprietary interest on the suit land parcel No. W/Bunyore/Essaba/2076 "A".
4. That the appellant has been trespassing on the suit land and that the trial court found so. That the applicant will not suffer any irreparable loss and that instead it is her who will continue to suffer losses if the applicant is allowed to continue staying on the land. That the applicant has not offered security and that she is entitled to enjoy the fruits of the judgement.



5. The application was argued by way of written submissions. Written submissions dated 3rd April, 2025 were filed on behalf of the applicant and on behalf for the Respondent written submissions dated 7th April 2025 were filed.

1. I have considered the application, the grounds advanced in opposition thereof and the submissions made. The grounds for grant of orders of stay of execution of decree/judgement are provided for in Order 42 Rule 6(2) of the Civil Procedure Rules 2010 as follows:

No order for stay of execution may 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. In the case of Shell Kenya Ltd v Benjamin Karuga Kibiru & Another [1986] eKLR 410 the court stated that

“if it is shown that execution would render a proposed appeal nugatory then a stay can properly be granted.”

7. It is not disputed that the judgement the subject matter of the appeal herein decreed for, inter alia, the eviction of the appellant from the suit land and an order that the OCS Luanda to provide security during the exercise. It is clear from the judgment that the 60 days given by the court have since elapsed.

8. The appellant has demonstrated that he has filed the appeal. In the circumstances, it is clear that if there is no order of stay, the execution may take place with the result that the appellant will be evicted from the suit land and if this happens, the applicant will no doubt suffer substantial loss.

9. I find that the application is merited and hereby allow it in the following terms;

i. An order of stay of execution of the judgement and decree delivered on 27th February 2025 in Vihiga SPM ELC Case No E010 of 2022 is hereby granted on condition that the applicant deposits in court the sum of Kenya shillings one hundred thousand only (Kshs 100,000/=) being security within 45 days hereof failing which the order of stay of execution herein granted shall lapse.

ii. Costs of the application to the Respondent

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 12TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:-

Ajevi: Court Assistant.

Mirembe for the appellant/applicant.



No appearance for the Respondent.

