



**Angwenyi v Gichia & another (Environment and Land Appeal
E032 of 2021) [2025] KEELC 4507 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4507 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E032 OF 2021
LC KOMINGOI, J
JUNE 12, 2025**

BETWEEN

ALLOYCE NYAMWEYA ANGWENYI APPLICANT

AND

JANE WAKABA GICHIA 1ST RESPONDENT

COUNTY GOVERNMENT OF KAJIADO 2ND RESPONDENT

*(Being an appeal from the Judgement delivered by Hon. B. Cheloti
(SPM) on 9th November 2021 in Kajiado MCCC 61 Of 2011)*

RULING

1. This Ruling is in respect of the Notice of Motion Application dated 10th July 2024 brought under: Article 159(2) of the [Constitution](#); Section 1A, 1B, 3 and 3A of the [Civil Procedure Act](#); Order 40 Rule 1, 2, 4 and 5, Order 51 Rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of Law. It seeks:
 - i. Spent
 - ii. Spent.
 - iii. The Honourable Court be pleased to order stay of execution of the judgment and Decree of the Court given on 9th November 2021 pending the hearing and determination of this Appeal.
 - iv. The Honourable Court be pleased to order stay of execution of the warrants of attachment and sale issued to Wiskam Auctioneers on 12th June 2024 pending the hearing and determination of this Appeal.
 - v. The Honourable Court be pleased to order that the warrant of attachment and warrant of sale of property issued to Wiskam Auctioneers on 12th June 2024 be recalled and cancelled;



- vi. Costs of the application do abide the outcome of the Appeal.
2. The grounds are on the face of the application and are set out in paragraphs 1 to 7. The Notice of Motion also supported by the sworn Affidavit of Aloyce Nywamweya Angwenyi the Appellant herein sworn on the 10th July 2024. He avers that in the impugned judgement, costs were apportioned to the Defendants who were him and the 2nd Respondent herein. Aggrieved by this order of costs and the entire judgement, he filed this appeal. The 1st Respondent then vanished causing a delay in prosecuting this Appeal and this also caused her then Advocate to cease from acting. Sometime in July 2024, three years later, he was ambushed by a phone call from auctioneers who issued him with a proclamation of attachment of his movable properties to recover costs of the Lower Court's suit. He claims that he was never made aware of the bill of cost or Lower Court's decree and as such the warrant of attachment on costs and decree issued to him were unprocedural. He also claimed that the Lower Court ordered that costs be borne by the Defendants but the 1st Respondent apportioned the entire cost on him. Therefore, the orders sought should be granted as the Applicant stands to suffer loss and prejudice by the 1st Respondents' actions.
3. The 1st Respondent seems not to have responded to this Application. There is no Replying Affidavit in the Court file or on the online Case Tracking System.
4. This application was canvassed by way of written submissions.

The Appellant's/Applicant's Submissions

5. Counsel submitted that a stay of execution of the Judgement dated 9th November 2021 was imperative, since there was an imminent risk of the Respondent executing the judgement which could render the Appeal nugatory. Counsel submitted as per Order 42 Rule 6 of the [Civil Procedure Rules](#), the following grounds ought to be satisfied for stay of execution to be granted.
6. On whether substantial loss would be suffered, it was submitted that the Applicant was likely to suffer loss of Kshs. 114,125 which the Respondent had decreed as costs of the suit. Counsel pointed out that when the bill of costs was filed, the Applicant was never served or made aware for him to respond. Executing the decree by attaching his motor vehicle would lead to substantial loss by paralysing his source of livelihood citing [Antoine Ndiaye vs African Virtual University \[2015\] eKLR](#).
7. On whether the application was made without delay, counsel submitted that this application was filed without delay because the Applicant became aware of the execution when he received the auctioneers' proclamation on 5th July 2024. Therefore there was no delay and the application would not prejudice the Respondent.
8. On security for costs, it was submitted that the Applicant would abide by the Court orders should it issue an order for security as per Order 42 Rule 6(2)(b) of the [Civil Procedure Rules](#).

The 1st Respondent's submissions

9. On whether the Appellant had met the conditions for stay of execution pending appeal as per Order 42 Rule 6 of the [Civil Procedure Rules](#), counsel submitted that the claim that the Appellant would suffer substantial loss for the motor vehicle which he uses for his daily activities was unsubstantiated. It was submitted that if the proclaimed vehicle is sold to recover costs, this could be remedied by reimbursement of proceeds of sale. Counsel went on to add that irreparable damages referred to damages that could not be easily remedied by monetary compensation or damage that was so severe with a permanence to it that it could be undone with reference to: [James Wangalwa & Another v Agnes](#)



Naliaka Cheseto [2012] eKLR; *Meteine Ole Kilelu & 19 others v Moses K. Nailole* [2009] eKLR; and *Ndungu v Mutua* [2024] KEHC 6276 (KLR).

10. On the issue of inordinate delay, counsel submitted that after the delivered on 9th November 2021, a 30 day stay of execution was granted. On 1st December 2021, the appeal herein was filed but it took the Appellant three years to settle the costs leading to commencement of the execution of the costs sometime in June 2024. Further, in that time, the Appellant did not deem it fit to seek extension of the stay orders and it was only after the execution process that the Appellant filed for stay. This delay was therefore inordinate as held in *Ndungu v Mutua* (*supra*) and *Charles Koskei Mereng & 3 others v Twin Constructions Co. Limited* [2016] eKLR.

Analysis and determination

11. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and authorities cited. I find that the issue for determination is:
- i. Whether the Application for stay of execution of the judgment and Decree of the Lower Court given on 9th November 2021 is merited;
 - ii. Whether stay of execution of the warrants of attachment and sale issued by Wiskam Auctioneers on 12th June 2024 should be issued;
 - iii. Whether this Court should order that the warrant of attachment and warrant of sale of property issued by Wiskam Auctioneers on 12th June 2024 be recalled and cancelled;
 - iv. Who should bear the costs of this application?
12. The Appellant seeks stay of execution of the Judgment dated 9th November 2021 as well as stay of execution of the decree and warrants of attachment dated 12th June 2024.
13. The Appellant claims that after the Judgement was delivered, this Appeal was filed but could not proceed due to the 1st Respondent's absence. He claims that the 1st Respondent could not be traced leading to her previous advocate to cease acting for her. He was therefore surprised to receive warrants of attachment of property based on a decree issued at the Lower Court for Bill of Costs that he was unaware of. He went on to aver that the warrant of attachment and bill of costs were illegal and unprocedural because he was never given an opportunity to respond. He also added that the costs as per the Lower Court should have been covered by both Defendants, but the 1st Respondent had put the entire bill on him.
14. The 1st Respondent argued that this application was inordinate because it was filed in 2024 while the judgement was delivered in 2021. And it was only after execution of costs that the application was filed and it should be dismissed.
15. Order 42, rule 6 of the Civil Procedure Rules provides that:
- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 application being made, to consider such application and to make such order thereon as may to it seem just, and 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 such order set aside.



- (2) No order for stay of execution shall be made under subrule (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;
16. This court has perused the Court file as well as the Record of Appeal and notes that at the time the Memorandum of Appeal was filed, an application seeking stay of execution of the impugned judgement was not sought. The record shows that the 1st respondent did not respond to the appeal as her then counsel, on several occasions, sought leave to cease acting and finally did. It therefore seems like the 1st Respondent went ahead and decreed for costs of the lower Court's suit and the execution process began.
17. There are however serious allegations regarding the said decree. The Appellant claims that the bill of costs was filed without his knowledge thus denying him an opportunity to respond. He also claims that the costs of the lower Court suit was entirely apportioned to him contrary to the Lower Court orders. The court also notes that should stay not be ordered, then the appeal might be rendered nugatory should the Respondent pursue execution and proclamation of the decree.
18. While taking into consideration that reasons for not filing the stay of execution three years ago have not been given, land is indeed an emotive issue and this Court should ensure that justice is served and no person should be condemned unheard. The Court is also cognisant of the grave accusations concerning the decree and the execution process.
19. On the issue of security of costs Order 42 Rule 6 (2)(b) Civil Procedure Rules gives the Court authority to order for security: 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. The Court finds it fit to order that the Appellant does deposit Kshs. 100,000 as security within forty five (45) days of this ruling.
20. I therefore find that the application is merited and order that:
- i. There be stay of execution of the decree issued on 12th June 2024 and the subsequent proclamation of attachment dated July 2024 by Wiskam auctioneers pending the hearing and determination of the appeal.
 - ii. The appellant to provide security of Kshs. 100,000 by depositing the same in an interest earning account in the joint names of the counsel on record for appellant and the 1st respondent within forty (45) days of this Ruling.
 - iii. Costs of this application shall abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12TH DAY OF JUNE 2025.

L. KOMINGOI.

JUDGE.

In the Presence of

Ms. M. Koros for the Appellant.

Mr. Kabucho for the 1st Respondent.

N/A for the 2nd Respondent.

Court Assistant – Mutisya.

