



**Ikiugu v Mpaka (Suing as the Legal Representative of the Estate of Gilbert Karagania Miringo) (Environment and Land Appeal E042 of 2024) [2025] KEELC 6526 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6526 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E042 OF 2024  
JO MBOYA, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**NATHANIEL KITHINJI IKIUGU ..... APPELLANT**

**AND**

**PAULINE MPAKA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF GILBERT KARAGANIA MIRINGO) ..... RESPONDENT**

**RULING**

1. What is before me is the Notice of Motion Application dated the 19<sup>th</sup> September, 2025; brought pursuant to the Provisions of Order 51 Rule 1 Of The Civil Procedure Rule; Sections 1 A , 1B, 3 A And 63 ( e) of the *Civil Procedure Act*; and wherein the Appellant /Applicant has sought the following reliefs:
  - i. That the court do issue orders discharging and/or releasing the Title Deed No. Ntima/ Ntakira/3348.
  - ii. That cost be in the cause.
2. The subject application is premised on grounds which have been highlighted in the body thereof. Furthermore, the application is supported by the affidavit of Nathiel Kithinji Ikuugu [the deponent] sworn on the 19<sup>th</sup> of September, 2025; and to which the deponent has annexed two [2] sets of documents including a copy of the Judgment that was delivered on the 4<sup>th</sup> of December, 2024.
3. The Respondent filed a replying affidavit sworn on the 26<sup>th</sup> of September, 2025 and wherein the respondent has annexed assorted documents. The documents annexed by the respondent include a copy of the notice of appeal lodged against the judgment and the decree rendered on 4<sup>th</sup> December, 2024; and a copy of the application lodged at the Court of Appeal sub registry at Nyeri; and wherein



- the Respondent seeks an order of stay of execution of the decree issued by this Court [differently constituted]
4. The subject application came up for hearing on the 30<sup>th</sup> of September, 2025; whereupon the court gave directions pertaining to and concerning the hearing of the application. In particular, the court directed that the application be canvassed by way of oral submissions. For coherence, the submissions on behalf of the respective parties are on record.
  5. Briefly, learned counsel for the Applicant adopted the grounds contained in the body of the application and reiterated the contents of the supporting affidavit. Furthermore, learned Counsel for the applicant highlighted two [2] key issues for consideration by the court, namely; whether the security which was deposited before the court as a condition underpinning the orders of stay ought to be released; and whether the pendency of an Intended appeal constitute[s] a bar to the release of the security.
  6. Regarding the first issue, learned counsel for the applicant has submitted that the applicant herein filed an appeal before this court. In addition, counsel submitted that the applicant contemporaneously filed an application for stay of the execution of the judgment issued by the subordinate court pending the hearing and determination of the appeal.
  7. It was the further submission by the Learned counsel for the applicant that the application for the stay of execution was heard and allowed. In particular, counsel submitted that the court ordered and directed that there be stay of execution of the impugned decree, albeit subject to deposit [surrender] of the original certificate of title in court as security for the due performance of the decree that may ultimately ensue.
  8. Additionally learned counsel, for the applicant has submitted that pursuant to the ruling of the court rendered on the 31<sup>st</sup> July, 2024; the applicant proceeded to and deposited the certificate of title of the suit property with the Deputy Registrar of the Court.
  9. Be that as it may, counsel has submitted that the appeal under reference was heard and disposed of vide judgment delivered on 4<sup>th</sup> December, 2024; whereupon the appeal was allowed. To this end, it was submitted that the respondent's claim to the suit property by way of adverse possession was dismissed.
  10. Consequently, and in the premises, it has been submitted that the basis upon which the security was deposited has since dissipated/lapsed. In this regard, it was posited that the security therefore ought to be released back to the Appellant/ Applicant.
  11. Turning to the second issue, learned counsel for the applicant has submitted that the lodgement of a notice of appeal; and an application for stay do not constitute an order of stay to bar the release of the certificate of title, either in the manner contended by the Respondent or at all.
  12. Flowing from the foregoing, learned counsel for the applicant has invited the court to find and hold that the application is merited. To this end, the Court has been invited to grant the application; and proceed to discharge the Certificate of Title under reference.
  13. The respondent adopted and relied on the contents of the replying affidavit sworn on the 26.09.25; and thereafter highlighted three [3]key issues namely: there exists a notice of appeal which was duly filed, there also exist an application for stay of execution before the court of appeal; and the security ought not to be released until the appeal is heard and concluded.
  14. Regarding the first issue, the applicant has submitted that following the delivery of the judgment of this court [differently constituted] same filed/lodged a notice of appeal thereby exhibiting her intention to challenge the decision of the Court. In this regard, it has been submitted that there is an appeal before



- the Court of Appeal; and hence the release of the title is premature. Furthermore, it was submitted that the current application is intended to defeat the pending appeal.
15. Secondly, the respondent has submitted that same has also filed an application for stay of execution of the decree before the court of appeal. Nevertheless, the respondent conceded that the court of appeal has neither issued nor granted any orders of stay or at all.
  16. Lastly, the respondent submitted that because of pendency of the appeal to the court of appeal, the certificate of title which was deposited as security pending the hearing of this appeal ought to be retained until the appeal before the court of the appeal is disposed of. Further and in any event, it was submitted that the applicant herein may alienate; or dispose of the suit property.
  17. Having reviewed the application; and the response thereto and upon taking into consideration the submissions on behalf the respective parties, I come to the conclusion that the determination of the subject application turns on two [2] key issues, namely; whether the security vide certificate of title ought to be released; and whether the pendency of an appeal/intended appeal constitute[s] bar to the release of the title.
  18. Regarding the first issue, it is imperative to recall and reiterate that the order of stay of execution of the Judgment and decree under reference, was granted pending the hearing and the determination of the subject appeal. In addition, the deposit of the certificate of title was ordered to subsist pending the determination of the appeal. For good measure, the Appeal that underpins the issuance and subsistence of the Order of stay of execution is the current appeal; and not otherwise.
  19. Furthermore, it is instructive to note that the appeal for which the security was decreed, namely; the subject appeal; has since been heard and determined. To this end, there is not gainsaying that the basis upon which the security was issued has since lapsed and/or extinguished.
  20. Flowing from the foregoing, I find and hold that the certificate of title [security for the due performance of the Decree] can no longer be held by the court taking into account that the appeal has since been disposed of. Simply put, the order has been rendered otiose.
  21. Turning to the second issue, it is common ground that the filing and lodgement of a notice of appeal; an appeal; or 2<sup>nd</sup> appeal by and of itself does not constitute an order of stay of execution. For good measure, an Order of stay can only arise where and when the court has exercised its discretion and granted one. [See the provisions of order 42 rule 6 (1) of the Civil Procedure Rules 2010]
  22. Premised on the foregoing, it suffices to state that even though the respondent has filed and lodged a notice of appeal, the existence of the said notice of appeal cannot be deployed to defeat the release of the certificate of title. Furthermore, it is not lost on me that the filing of an application for stay of execution before the court of appeal does not amount to an order of stay. In addition, neither the respondent nor this court can 2<sup>nd</sup> guess the orders that the court of appeal may ultimately grant, [if at all].
  23. Notwithstanding the foregoing, it is old learning that this court can only decline to release the certificate of title [security] if there does exist live orders barring such release. Absent any live orders, it would be unjust; and unreasonable for this court to decree the continued retention of the certificate of title; long after the basis for such retention has lapsed.
  24. Before concluding on this matter, it is instructive to observe that the order for provision of security in terms of Order 42 Rule 6 (2) Civil Procedure Rules; was dependent on the occurrence of an event. For good measure, the event has since occurred.



**Final Disposition.**

25. For the reasons which have been adverted to [highlighted] in the body of the ruling, it must have been become crystal clear that the application before is meritorious. Same deserve[s] favourable orders.
26. In the upshot, the final orders of the court as hereunder:
- i. The Application dated 19.09.25 be and is hereby allowed.
  - ii. The orders of stay of execution of the judgement and decree of this court issued on the 31.07.24 pending the hearing of the subject Appeal be and are hereby vacated/discharged.
  - iii. The certificate of title in respect of LR No. Ntima/Ntakira/3348, be and is hereby released to the Appellant/Applicant forthwith.
  - iv. Each party shall bear own costs of the Application.
27. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].**

**JUDGE**

In the presence of:

Hussein/Mukami -Court Assistance

Mr. Ken Muriuki for the Appellant/Applicant

Pauline Mpaka – the Respondent in person.

