



Kimuri Housing Company Limited v Liquidator, Lukenya Ranching Co-operative Society (Stanley Ongeti) & 4 others (Environment and Land Case 247 of 2017) [2025] KEELC 6195 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6195 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 247 OF 2017
NA MATHEKA, J
SEPTEMBER 23, 2025**

BETWEEN

KIMURI HOUSING COMPANY LIMITED PLAINTIFF

AND

**THE LIQUIDATOR, LUKENYA RANCHING CO-OPERATIVE SOCIETY
(STANLEY ONGETI) 1ST DEFENDANT
MWANZO DEVELOPMENT COMPANY LIMITED 2ND DEFENDANT
MUTIE WILLY 3RD DEFENDANT
MURIIITHIA WA-ANDU COMPANY LIMITED 4TH DEFENDANT
COMMISSIONER OF LANDS 5TH DEFENDANT**

RULING

1. The first application is dated 17th March 2025 and is brought under Section 3A of the [Civil Procedure Act](#), Chapter 21 of the Laws of Kenya, Order 22 Rule 22(1) and (3), Order 42 Rule 6(1) (2) (a) and (b) and (4), and Order 51 Rule 1 of the Civil Procedure Rules 2010, Article 50 of [the Constitution](#) of Kenya 2010 seeking the following orders;
 1. That this Application be certified as urgent and be heard ex parte in the first instance.
 2. That there be an order for stay of execution of the Judgment issued on the 27th of February, 2025 by Honourable Lady Justice Christine A. Ochieng, pending the inter partes hearing and determination of this Application.



3. That this Honourable Court be pleased to grant an Order for a further stay of execution herein until the 3rd Defendant/Applicant's intended Appeal at the Court of Appeal is heard and determined.
 4. That in the alternative this Honourable Court be pleased to issue a conservatory order for the maintenance of the status quo until the 3rd Defendant/Applicant's intended Appeal at the Court of Appeal is heard and determined.
 5. That this Honourable Court be pleased to issue any other order that it deems fit and just in the circumstances.
 6. That costs of this Application be in the cause.
2. It is supported by the Supporting Affidavit of Mutie Willy, the 3rd Defendant/Applicant and grounds that the 3rd Defendant/Applicant herein intends to lodge an Appeal against the Judgment of this Honourable Court that was delivered on the 27th of February, 2025 by Honourable Lady Justice Christine A. Ochieng. That towards the end, the 3rd Defendant/Applicant herein has already filed his Notice of Appeal. That there being no Orders for stay of execution, the Plaintiff/Respondent is likely to execute the Decree emanating from the said Judgment any day soon as the Plaintiff/Respondent's counsel has already embarked on the process of extracting the said Decree and which execution process shall not only greatly prejudice the 3rd Defendant/Applicant but other innocent 3rd parties who lawfully bought pieces or parcels of land from the 3rd Defendant/Applicant. That the 3rd Defendant/Applicant's intended Appeal at the Court of Appeal shall be rendered nugatory unless the orders sought herein are granted. That the said intended Appeal is meritorious and raises triable issues. That the said intended Appeal has a very high likelihood of success. That the 3rd Defendant/Applicant stands to suffer irreparable and immeasurable loss unless the orders prayed for herein are granted. That the 3rd Defendant/Applicant is able, ready and willing to abide by any conditions that this Honourable Court shall issue, if at all. That the Plaintiff/Respondent shall not suffer any prejudice herein if the orders sought herein are granted.
3. The Plaintiff/Respondent submitted that the application was an abuse of the court process and the Applicant will not suffer substantial loss as the subdivision was undertaken in contravention of a court order. That the Applicant has not shown how they will suffer substantial loss.
 4. This court has considered the application and the submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the Civil Procedure Rules as follows;

“No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 an application being made, to consider such application and to make such orders thereon as may to it seem just, 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 the orders set aside.”
 5. Order 42, rule 6 states:

“No order for stay of execution shall 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. The Appellants need to satisfy the Court on the following conditions before they can be granted the stay orders:
 1. Substantial loss may result to the applicant unless the order is made.
 2. The application has been made without unreasonable delay, and
 3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.
7. The principles governing the exercise of the court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the Applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of *Reliance Bank Ltd (In Liquidation) vs Norlake Investments Ltd – Civil Appl. No. Nai. 93/02 (UR)*, thus;

“Hitherto, this Court has consistently maintained that for an application under rule 5(2) (b) to succeed, the applicant must satisfy the court on two matters, namely:-

 1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
 2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”
8. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange vs Richard Nyagaka Tongi & 2 Others* eKLR where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;

“..... The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”
9. In the case of *Mohamed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat* (2013) eKLR, the court stated that;

“That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right”



10. We are further guided by the court's decision in *Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others* Civil Appeal No. 291 of 1997, at Page 4 as follows:

“ . . . the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . . the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.”

11. The 2nd and 3rd Respondents stated that they will suffer substantial loss as the suit properties on the ground a fully developed by individuals who had purchased them and obtained title deeds. That the developers have put up massive residential and business properties. That the third parties are not party to this suit as they were not sued. That they have established that substantial loss will be suffered.

12. I find that the applicant is not guilty of laches as judgement was delivered on 27th February 2025 and this application is dated 17th March 2025. The 3rd Defendant/Applicant submitted that the said Judgment the suit land had ordered cancellation of the 1st Respondent's title and transfer of the land to the Plaintiff/Respondent. That the said Decree and which execution process shall not only greatly prejudice the 3rd Defendant/Applicant but other third parties who bought pieces or parcels of land from the 3rd Defendant/Applicant. I find that the Respondent is not in possession of the suit plot. I find that the draft memorandum attached to the application on the grounds of appeal raises an arguable appeal and I find that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. I find that the applicant has fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is merited and I grant prayer 3 of the application on condition that the appeal is filed within the next 30 days. Costs of this application to be in the cause.

12. The second application is dated 17th April 2025 and is brought under Sections 1A, 1B, 3A of the *Civil Procedure Act*, Order 1 Rule 10 of the Civil Procedure Rules, Order 50 of *the Constitution*, Section 10 of the *Judicature Act* and Rule 3(1) of the High Court Practice and Procedure Rules seeking the following orders;

1. That service of this application should be dispensed with in the first instance.
2. That leave be granted for the Applicant be heard during the current High Court Vacation.
3. That the Honourable Court be pleased to enjoin the Applicant HENRY ASUMA NDEMO as an Interested Party in this cause.
4. That there be stay of execution of the Judgment and Decree herein given on 27th February, 2025 pending hearing and determination of this Application.
5. That the Honourable Court be pleased to set aside the Judgment and Decree given on 27th February, 2025.
6. That the costs of this application be provided for

13. It is grounded on the annexed Affidavit of Henry Asuma Ndemo and the following grounds that the Applicant/Intended Interested Party is the registered owner of land Title No. Mavoko Town Block 3/8565. That Applicant purchased the suit property from the then Registered of the same the 3rd Defendant on 5th August, 2021 at a consideration of Kenya shillings 3,500,000/= which he paid in full. That upon purchase of the suit property the 3rd Defendant duly signed transfer in favour of the Applicant upon obtaining a Land Control Board consent on 1st February, 2022. That Applicant



obtained title to the suit property on 25th March, 2024 and immediately took possession of the same and commenced commercial development and has so far put up houses thereon. That the Applicant's land Title No. Mavoko Town Block 3/8565 was one of the subject matter of this case yet the Applicant was never joined in the case and was condemned unheard. That this suit was concluded on 27th February, 2025 in a Judgment in which his property is subject to cancellation of his Title Deed. The Applicant intends to raise a Counter-claim over the ownership of land Title No. Mavoko Town Block 3/8565 which is duly registered in his name. This court has considered the application and the submissions therein. The legal position on joinder of parties is Order 1 Rule 10 (2) of the Civil Procedure Rules which provides as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

14. The principles to be considered for joinder of a party were well enumerated in the decision in *Meme vs Republic* (2004)1 124, which principles are;
 - a) joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings,
 - b) joinder to provide a protection of a party who would otherwise be adversely affected in law,
 - c) joinder to prevent a likely course of proliferated litigation.”
15. The law clearly stipulates that joinder can be made of any party as Plaintiff or Defendant or as one whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The considerations by the court before allowing a person to be joined in the suit have been stretched to include those who would be adversely affected in law and also to prevent proliferated litigation.
16. From the pleadings before the court, the intended Interested Party maintains that the Judgment delivered on 27th February, 2025 affects the Applicant directly as it directs for his eviction yet he was an innocent purchaser for value. That the Applicant stands to suffer substantially loss from the decision of the court as he has invested a substantial sum developing the property. That it is in the interest of justice that the Applicant be joined in this case as an Interested Party to be able to put up his case for ownership of land Title No. Mavoko Town Block 3/8565 and in the meantime there be a stay of execution of the Judgment herein.
17. I find that the Applicant produced documentary evidence claiming to have purchased part of the suit land. In the circumstances therefore, the said intended Interested Party is proper party to be joined in this suit as an Interested Party. This is in order for him to defend his interest in the property. It is therefore in his best interest to be joined in the suit.
18. His presence in this suit will also ensure that he is accorded a right of hearing by participating in the suit. He will therefore not be condemned unheard. The importance of the right to be heard was articulated



in the case of Mbaki & others vs Macharia & another (2005) 2 EA 206, at page 210, where the Court stated as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”

19. Further allowing the prayer for joinder will prevent a multiplicity of suits as the questions and issues relating to ownership of the suit will be determined completely. The order for stay having been granted in the first application, I find that the prayer for joinder is merited and I grant the following orders;
1. That the Honourable Court be pleased to enjoin the Applicant Henry Asuma Ndemo as an Interested Party in this cause.
 2. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 23RD DAY OF SEPTEMBER 2025.

N.A. MATHEKA

JUDGE

