



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Muchene v Karungu & 5 others (Civil Appeal E042 of 2025)  
[2025] KEELC 6546 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6546 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
CIVIL APPEAL E042 OF 2025  
MD MWANGI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**LONKISA OLE MUCHENE ..... APPELLANT**

**AND**

**EDWARD JAMES KARUNGU ..... 1<sup>ST</sup> RESPONDENT**

**CHARLES THUO KARUNGU (BEING SUED AS PERSONAL  
REPRESENTATIVES OF THE ESTATE OF HENRY MWANIKI KARUNGU  
(DECEASED) ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR, KAJIADO NORTH ..... 3<sup>RD</sup> RESPONDENT**

**BENSON MATIAS KUYATEI ..... 4<sup>TH</sup> RESPONDENT**

**EZEKIEL FUKWO WAFULA ..... 5<sup>TH</sup> RESPONDENT**

**DAVID RIGICHA NGANGA ..... 6<sup>TH</sup> RESPONDENT**

*(In respect of the Notice of Motion application dated 26th May 2025 seeking a stay of execution pending appeal pursuant to Order 42 Rule 6 of the Civil Procedure Rules)*

**RULING**

**Introduction**

1. Before this Court for determination is the Appellant's Notice of Motion application dated 26th May 2025, in which the following substantive orders are sought:
  - a. Spent
  - b. Spent



- c. That this Honourable Court be pleased to issue an order of stay of execution of the Judgment delivered on 20th May 2025 by Hon. Roseline A. Oganyo in Kajiado ELC Case No. 61 of 2019 and the decree flowing therefrom, on such terms as will preserve the outcome of the intended appeal.
  - d. That upon grant of prayer (c) above, this Honourable Court be pleased to vary and/or set aside the orders of Hon. Justice Roseline A. Oganyo made on 20th May 2025 pending the hearing and determination of this application.
  - e. That the costs of this application be provided for.
2. The application is supported by the affidavit of Lonkisa Ole Muchene, the Applicant/Appellant herein, who deposes that he was the 1st Defendant in Kajiado ELC Case No. 61 of 2019 wherein Judgment was delivered on 20th May 2025 in favour of the Plaintiffs/Respondents. Being dissatisfied with the said Judgment, he has lodged a Notice of Appeal dated 26th May 2025 and intends to challenge the Judgment in its entirety as is evident from the draft Memorandum of Appeal. He asserts that the intended appeal raises arguable issues with high chances of success; that unless the orders sought are granted he stands to suffer irreparable loss and damage as the appeal, if successful, would be rendered nugatory; and that the application has been made without unreasonable delay and in the interest of justice.
  3. The application is opposed by way of the Grounds of Opposition dated 4th August 2025 filed by the 1st and 2nd Respondents, wherein it is contended that there is no competent appeal on record upon which the present application for stay of execution can properly be anchored; that the application dated 26th May 2025 is fatally and incurably defective and therefore devoid of merit; that the application fails to meet the requisite legal threshold for the grant of stay of execution; and that the same amounts to an abuse of the court process and ought to be struck out or dismissed with costs.

#### **Indirections**

4. The court directed that this application be canvassed by way of written submissions. The parties did not comply within the timelines given.

#### **Analysis and Determination**

5. The singular issue arising for determination is whether the Applicant/Appellant has satisfied the legal requirements for the grant of stay of execution of the Judgment delivered on 20th May 2025 in Kajiado ELC Case No. 61 of 2019 pending the hearing and determination of the appeal.
6. Order 42 Rule 6(2) of the Civil Procedure Rules sets forth the conditions a litigant must meet to warrant grant of a stay of execution pending appeal. It provides as follows:

“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.”



7. Judicial interpretation of these conditions has been reiterated in various decisions of the superior courts. In *Njenga v Njeri & 2 others* [2023] KEHC 23991, the High Court held that:

“The principles upon which this Court may grant stay of execution pending appeal are well-settled as enshrined in Order 42 Rule 6 of the Civil Procedure Rules, which requires an applicant seeking a stay of execution pending appeal to demonstrate that: a. Substantial loss may result to the applicant unless the order is made; b. The application was made without unreasonable delay; and c. 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.”

8. The above pronouncement is in line with earlier decisions on the grant of stay pending appeal. In *Kenya Shell Limited v Benjamin Karuga Kigibu & Ruth Wairimu Karuga* [1982-88] 1 KAR 1018, the Court held:

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting a stay. That is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

9. The Court of Appeal in *Halai & Another v Thornton & Turpin (1963) Ltd* [1990] KLR 365 had emphasized that:

“The High Court’s discretion to order a stay of execution of its order or decree is fettered by three conditions. Firstly, 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. The application must of course be made without unreasonable delay.”

10. The Applicant has filed a Notice of Appeal dated 26th May 2025, annexed to his affidavit, signifying his intention to challenge the Judgment in its entirety. I am not satisfied that the filing of a Notice of Appeal properly anchors the present application. There is no provision in law for the filing of a Notice of Appeal by a party intending to file an appeal to this court unlike the court of appeal. Order 42 rule 1 provides that appeals to the High Court shall be by way of a memorandum of appeal signed in the same manner as a pleading and setting forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

11. On the element of delay, the Judgment was delivered on 20th May 2025, while this application was filed on 26th May 2025, a period of six days. I find that the application was brought timeously without undue delay.

12. As to substantial loss, the Applicant avers that unless stay is granted, he will suffer irreparable loss and his appeal will be rendered nugatory. However, he has not demonstrated the nature of the alleged loss or how it would specifically prejudice him if execution proceeds. The law is clear that substantial loss must be shown by evidence and not mere averments. As was stressed in *Kenya Shell Limited v Benjamin Karuga Kigibu* (supra):

“If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event.”



13. Discussing the condition of substantial loss in the case of James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2012] eKLR, the Court stated that:

“The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal.”

14. The Court emphasized that:

“The issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

...the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

15. From the foregoing analysis, the Applicant has failed to demonstrate substantial loss. Consequently, this court finds that the application dated 26th May 2025 is devoid of merit.

16. Accordingly, and for the reasons stated above, the Notice of Motion dated 26th May 2025 is hereby dismissed with costs to the 1st and 2nd Respondents.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Faith Gichuru for the Applicant

Mr. Muriithi for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Court Assistant: Mpoye

