



**Mwangi v Gikonyo (Environment and Land Case E227 of 2021)  
[2025] KEELC 6714 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6714 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E227 OF 2021**

**JG KEMEI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**GEORGE GIKONYO MWANGI ..... PLAINTIFF**

**AND**

**HANNAH WAMBUI GIKONYO ..... DEFENDANT**

**RULING**

**(In respect of the Defendant's application dated 9/4/25)**

1. Vide the instant notice of motion dated 9/4/25, the Defendant sought a single order that the orders of the court issued on 27/3/25 be stayed pending the hearing and determination of the application.
2. The application is premised on the grounds annexed thereto and the supporting affidavit of Hannah Wambui Gikonyo, the defendant herein.
3. She averred that the above decision of the court has aggrieved her, following which she has appealed to the Court of Appeal. She expressed her apprehension that the Plaintiff will commence execution of the impugned judgment unless the court issues orders of stay of execution.
4. That in the meantime, she has applied for leave to file an appeal out of time in the Court of Appeal vide COA No E003 OF 2025, which application had been scheduled for hearing on 8/4/25 but was taken out and is now awaiting the new hearing date. Equally, she has applied for orders of stay of execution vide COA E658 of 2024, and a ruling is scheduled for 9/5/25.
5. That unless the orders of stay of execution are granted, she is apprehensive that the Plaintiff will execute the judgment, hence rendering the appeal nugatory. Further, that the suit land may be sold in a public auction within 45 days, and she will be faced with the imminent threat of being condemned unheard. She implored the court that the application had been filed timeously and that no party would be



prejudiced if the sought orders were granted. That it is in the best interest of justice that the orders sought be granted to prevent her property rights from being stripped.

6. The Plaintiff opposes the application through the Replying affidavit sworn on 2/5/25. The deponent contended that the Applicant/Defendant has neither filed any appeal against the ruling of 27/3/25 nor the judgment of 29/10/24.
7. There are no orders of stay of execution staying the ruling and the judgment as the Court of Appeal declined to issue an interim stay of execution in COA E658 of 2024 on the grounds inter alia that there was no competent appeal before the said court, the said appeal having been filed out of time and with no leave of the court.
8. That the mere fact of filing an appeal or an application for stay of execution does not automatically stay the execution of the judgment of this court.
9. The deponent pointed out that the concurrent filing of the application of a stay of execution in both the appellate and the current court is likely to lead to the issuance of conflicting orders, which would serve to embarrass the superior courts.
10. On substantial loss, the Plaintiff contended that the defendant has not demonstrated any substantial loss that she stands to suffer should the orders be declined. That the court preserved the defendant's undivided share in the property; been granted the opportunity to buy out the Plaintiff; the defendant does not live on the suit land but on another property in Juja hence she stands to suffer no substantial loss;
11. Further, the Plaintiff implored the court not to grant the orders because he stands prejudiced in more than one way; the defendant is deriving benefit from the rental income arising from the rented houses on his part of the land; the defendant is in continuous breach of the orders of the court.
12. On 29/5/25, parties elected to canvass the application by way of written submissions. The court has read and considered the said submissions.
13. The key issue for determination is whether the application is merited.
14. Before I delve into the merits of the application, the court must consider whether there is a competent application before it. The application before the court is expressed in the following terms;  

“That stay orders be issued staying the execution of the orders of the court issued on 27/3/25 pending the hearing and determination of this application”.
15. It is not in dispute that this court rendered a ruling on 27/3/25 as follows;
  - a. This Hon Court be and hereby enlarges time for a period of 45 days for undertaking a joint valuation of the suit property for purposes of determination of the value and compensation due and payable to both parties.
  - b. In default of the above, the Plaintiff be and is hereby allowed to unilaterally proceed with the valuation and sale by public auction (through nominated registered valuer and auctioneer) of the suit property.
  - c. The costs of the application are in favour of the Plaintiff
16. On 11/4/25, this court issued interim orders of stay of execution of the orders issued on 27/3/25. Going by the manner in which the Defendant fashioned the prayers in this application, it follows that the application became spent upon the granting of the interim orders.



17. I have carefully read the application and find that there is no appeal that the Defendant has preferred against the Ruling delivered on 27/3/25. What I understand the defendant to plead in the application is that she has filed an application seeking leave to file an appeal out of time against the judgment of the court issued on 29/10/24. The defendant, on the other hand, pleads that she appealed vide COA E658 OF 2024, seeking a stay of execution of the judgment, which application is awaiting the court's ruling.
18. It is therefore not in dispute that there is no appeal against the ruling of this court delivered on 27/3/25 to sustain an application for orders of stay of execution.
19. The reasons advanced above are sufficient to dismiss the application, given that it has no legs to stand. However, for the completeness of the record, the court will look into the merits of the application
20. It is trite law that an appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order a stay of execution are provided for under Order 42, Rule 6 of the Civil Procedure Rules. An Applicant for an order of stay of execution of a decree or an order pending appeal is obligated under Order 42 rule 6(2)I delve in to satisfy the following conditions, namely:
  - a. That substantial loss may result to the applicant unless the order is granted.
  - b. That the application has been made without unreasonable delay, and
  - c. That such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.
21. These principles were enunciated in *Butt vs Rent Restriction Tribunal* [1979] where the Court of Appeal stated what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that:
  - a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
  - b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
  - c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
  - d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.
22. Regarding substantial loss, the defendant has expressed her concern about the Plaintiff executing the Ruling if the orders are not granted. She fears that, without the orders, the suit land will be sold by way of public auction, thereby stripping her of her rights to the land and rendering her appeal nugatory. She states she will suffer loss and damage, while the Plaintiff, on the other hand, will not face any prejudice if the orders for stay of execution are granted.
23. The Plaintiff has refuted all the grounds advanced by the Defendant. Since there is no competent appeal against the judgment or the ruling of this court, orders for stay of execution cannot be upheld.



Furthermore, the defendant is collecting rent from the houses built on her part of the land, and because she does not reside on the land, she will not suffer any prejudice compared to the Plaintiff.

24. In the absence of any competent appeal currently pending before the appellate court, the court would agree with the Plaintiff that no appeal would be rendered nugatory.
25. It is trite that if there is no evidence of substantial loss to the applicant, the applicant will be disqualified from obtaining orders for a stay of execution. The reasons put forward by the Defendant in the previous paragraphs cannot, by any stretch of imagination, establish substantial loss.
26. Regarding whether the application was filed on time, the court observes that it was filed timeously.
27. Although it is trite that the court has discretion to order security for the proper execution of the decree, the applicant must show a willingness to meet the security requirements for the performance of the decree. In this case, the defendant has neither disclosed a deposit nor indicated her willingness to comply with any order the court may issue.
28. Final orders for disposal.
  - a. In the end, I find that the defendant's application is not merited.
  - b. Any interim orders be and are hereby discharged
  - c. It is dismissed with costs in favour of the Plaintiff.
29. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>th</sup> DAY OF SEPTEMBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of; -

1. Ochieng for the Plaintiff
2. Mr. Kimani for the Defendant
3. C/A- Ms. Yvette Njoroge

