



REPUBLIC OF KENYA



Mursoi (Suing on behalf of the Estate of Kipsaina Mursoi) v Kiplel & 7 others (Environment and Land Case E005 of 2021) [2025] KEELC 6215 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6215 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E005 OF 2021
CK YANO, J
SEPTEMBER 25, 2025**

BETWEEN

**JOSHUA KIPKORIR MURSOI PLAINTIFF
SUING ON BEHALF OF THE ESTATE OF KIPSAINA MURSOI**

AND

**EZEKIEL KIPLAAT KIPEL 1ST DEFENDANT
DAVID MBUTHIA MACHARIA 2ND DEFENDANT
LINUS NJAGI GATIMU 3RD DEFENDANT
ISAAC JULIUS SANG 4TH DEFENDANT
ROMANUS ANGOLET 5TH DEFENDANT
SAMWEL NJUGUNA KANGETHE 6TH DEFENDANT
GILBERT MASACHI EGESA 7TH DEFENDANT
JOSPHAT EVASA ENZUGA 8TH DEFENDANT**

RULING

1. This Ruling is in respect of two Applications; the Notice of Motion Application dated 13th March, 2025 by the 4th Defendant/Applicant and the Notice of Motion Application also dated 13th March, 2025 by the 1st Defendant/Applicant.
2. The Notice of Motion Application dated 13th March, 2025, by the 4th Defendant/Applicant sought the following orders: -
 - a. Spent.



- b. Spent.
 - c. Pending the hearing and determination of the intended appeal there be stay of execution of the decree of the honourable court in the matter herein.
 - d. Costs of the application be provided for.
3. The application is anchored on 7 grounds on the face thereof and supported by the affidavit sworn by the 4th defendant on even date and a Supplementary Affidavit dated 02.05.2025. He stated that the effect of the judgment issued on 20/2/2025, was to order the cancellation of his title deed to parcel No. Eldoret Municipality/Block 21 (King'ong'o) 946, his eviction therefrom and demolition of the structures thereon.
 4. He averred that the suit parcel has been his matrimonial property for more than 25 years and he has been in exclusive possession thereon since the year 1999. He further stated that he has carried out substantial developments on the suit land.
 5. It is his contention that being aggrieved by the decision of the court, he has since filed a notice of appeal against the said judgment issued on 20.02.2025 and sought proceedings to enable him pursue the appeal.
 6. It is his claim that unless the enforcement of the decree is stayed, he stands to suffer substantial loss since he may be evicted from his matrimonial home, his home demolished and his title to the suit land cancelled.
 7. He maintained that the application had been filed without unreasonable delay and stated that he is ready to abide by any terms as regards security for the due performance of the decree.
 8. He further asserted that he stands to be greatly prejudiced unless the orders sought are granted since he risks being removed from the suit land and the structures thereon destroyed.
 9. In his supplementary affidavit, he dismissed the allegations made by the Respondent that he had constructed and carried out developments during the subsistence of a court order.
 10. It was his contention that the court order in question was issued on 25/7/1997 and the decree issued on 25/8/1997 whereas he had already constructed his matrimonial home by June 1997.
 11. He further averred that by the time the said order was being made, the honourable court (Nambuye J.) did a site visit and consequently issued an order that there should be no further development or construction on the suit land.
 12. He argues that the said order was made by the court, being cognizant of the fact that construction had already taken place. It is therefore his claim that he has never in any way acted in contravention or violation of the said court order.
 13. He attached a copy of a Valuation Report dated 23/4/2025 as proof of the massive developments that he has undertaken on the suit land.
 14. He reiterated that he is ready to provide security for the due performance of the decree and maintained that he had met all the conditions necessary for the grant of an order of stay of execution.
 15. He dismissed the averment by the respondent on the alleged prejudice that the respondent is likely to suffer and stated that no evidence had been adduced of any pending bills in respect of the deceased persons.



16. The application was opposed. The Plaintiff/ Respondent filed a Replying Affidavit sworn on 28th March, 2025. It was his claim that the developments on the suit land (if any) were done in contravention and flagrant violation of valid court orders, which barred the applicant from conducting any construction on the suit land and the applicant cannot therefore benefit from the same.
17. It was also his contention that the applicant does not live on the suit land and dismissed the allegation by the applicant that the property is a matrimonial property.
18. He averred that the applicant did not meet the necessary conditions for the grant of a stay of execution pending an intended appeal as he has not shown any ability or commitment to meet the conditions that may be set by the court or offered any security against the execution of a valid court decree.
19. Further, it was his claim that having read the judgment of the court, it was his understanding that the court did not order for the demolition of the property in question.
20. He maintained that he stands to suffer great prejudice if the orders sought are granted for the reason that they have huge hospital bills to offset, accumulated from their late parents.
21. He dismissed the allegations by the applicant that he stands to suffer irreparable damage and added that the applicant has benefitted monetarily from renting out the suit property to tenants and has been enjoying rental income for several years.
22. He thus urged the court to dismiss the application with costs in the interest of justice.
23. The Notice of Motion Application dated 13th March, 2025, by the 1st Defendant/Applicant sought the following orders: -
 - a. Spent.
 - b. This Honourable Court be pleased to order stay of execution of the judgment and decree of this honourable court delivered on 20/02/2025 pending the hearing and determination of this application inter parties.
 - c. This Honourable Court be pleased to order stay of execution of the judgment and decree of this honourable court delivered on 20/02/2025 pending the hearing and determination of the appeal already lodged in respect of the said judgment.
 - d. Costs of this Application be provided for.
24. The application is premised on the 6 grounds on its face thereof and on the 1st Defendant/Applicant's Supporting affidavit. He stated that judgment was entered against him on 20.02.2025. That upon delivery of the judgment, the trial court granted temporary stay and which was set to lapse on 21.03.2025.
25. He deponed that being aggrieved and dissatisfied by the said judgment, he has since instructed his advocate on record to prefer an appeal at the Court of Appeal and even applied for typed proceedings.
26. It was his contention that the intended appeal has high chances of success. He further stated that he stands to suffer irreparable harm and loss in the event that the decree is executed and thus rendering the appeal nugatory.
27. The applicant maintained that the application was filed in good faith and without delay and urged the court to allow the application.



28. The Application was opposed. The Plaintiff/Respondent filed a Replying Affidavit sworn on 28.03.2025. It was his contention that the applicant has not filed any appeal and further that the intended appeal has no chances of success.
29. He maintained that the applicant has not demonstrated his claim to warrant the grant of stay of execution; that no security for costs has been offered, the mandatory provision for stay has not been fulfilled and further that he has not demonstrated the irreparable loss that he is likely to suffer unless stay is granted.
30. He argued that he should be allowed to enjoy the fruits of his judgment, with the dispute between the parties spanning over 30 years. That litigation must come to an end.
31. He therefore urged the court to dismiss the application with costs.
32. This court issued directions that the Applications be canvassed by way of written submissions. From a perusal of the court record, I have only seen the 1st and 4th applicants' submissions dated 05.05.2025 and 06.05.2025 respectively, which I have read and considered. Be as it may, I will proceed to determine the applications as hereunder;

Analysis and Determination:

33. I have read and considered the grounds in the respective applications, the supporting affidavits and the responses thereto as well as the applicants' submissions. Both the 1st and 4th defendants/applicants are seeking orders for stay of execution of the judgment and decree of this court issued on the 20.02.2025 in their respective applications.
34. Consequently, it is my considered opinion that the main issues arising for determination are;
 - i. Whether an Order for Stay of Execution can issue against judgment and decree issued on 20th February, 2025.
 - ii. Who shall bear the costs of the respective applications.

Whether an Order for Stay of Execution can issue against judgment and decree issued on 20th February, 2025;

35. It is settled law that no appeal shall operate as an automatic stay of execution. The purpose of an order of stay of execution is to preserve the substratum of appeal and ensure that the appeal is not rendered nugatory.
36. Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 empowers the court to stay execution, either of its judgment or that of a court whose decision is being appealed from, pending appeal.
37. Order 42 Rule 6(2) further sets out the grounds to be considered and provides as follows: -
 - (2) 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.
38. Thus, from the above provision, the three prerequisite conditions to be satisfied to warrant the grant of an Order for Stay of execution include;



- i. The Court is satisfied that substantial loss may result to the Applicant unless an order for stay of execution is ordered;
 - ii. The application is brought without undue delay and
 - iii. Security for costs as the court orders for the due performance of such decree or order is provided.
39. The first ground to be established is on substantial loss. Substantial loss has been held to mean any loss, great or small, that is of real worth or value and not mere nominal loss.
40. What amounts to substantial loss was expressed by the Court of Appeal in the case of *Mukuma vs Abuoga* (1988) KLR 645 where their Lordships stated that;
- “Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”
41. The 1st and 4th defendants/applicants are under a duty to demonstrate the loss they are likely to suffer if the order for stay of execution sought is not granted. It is not merely sufficient to state that substantial loss may be occasioned without demonstrating the same. (See *New Stanley Hotel Ltd –vs- Arcade Tobacconist* (1980) KLR 757).
42. The 1st defendant/applicant avers that unless the orders sought of stay of execution are granted, the respondent will be at liberty to transfer the suit land to his name and consequently, evict him from the suit land and demolish the properties and structures thereon. He further argues that the substantial loss that he stands to suffer cannot be compensated by costs.
43. He thus maintained that there is need to preserve the subject matter of the appeal by maintaining the status quo so that the appeal may not be rendered nugatory.
44. The 4th defendant/applicant on his part deponed that he has carried out substantial developments on the suit land including constructing permanent structures. He annexed a bundle of photographs to show the houses and structures on the suit land and a valuation report dated 23.04.2025 as proof of the massive developments he has done on the land.
45. He further stated that the suit land is his matrimonial property and has been residing on the said land for more than 25 years with his family.
46. It is his contention that if orders sought are not granted, the respondent will proceed to execute the decree and will be at liberty to transfer the land in his name and he may be evicted and his home demolished, his title thereto cancelled and/or the respondent may sell the suit land to 3rd parties.
47. The respondent denied the averments made by the respective applicants. It is his contention that both the 1st and 4th applicants respectively have not sufficiently demonstrated the substantial loss that they are likely to suffer.
48. He argues that the developments made by the 4th defendant/applicant were done in contravention of a court order which barred any construction on the suit land. Further, it was his averment that the 4th applicant does not live on the suit land neither is it his matrimonial property as alleged.
49. On the allegations made on eviction, the respondent deponed that the court did not order the demolition of any property on the suit land.



50. On the part of the 1st defendant/applicant, it was the respondent's contention that the 1st defendant/applicant did not demonstrate the irreparable loss that he is likely to suffer if orders for stay of execution sought is not granted.
51. I have carefully looked at the judgment of this court dated 20.02.2025, issued by my predecessor, E. Obaga J. and I do note that among the final orders issued was a declaration that the titles issued in the names of the defendants are null and void and consequently the cancellation of the said title deeds as held by the defendants, and which included the 1st and 4th defendants/applicants herein.
52. The effect of the said orders in my opinion is that unless orders for stay of execution are granted, the status quo before the registration of the suit parcels in the names of the 1st and 4th defendant/applicants respectively should be restored.
53. In essence therefore, the respondent will be at liberty to have the suit land transferred in his name and/or in favor of his late father's estate and to deal with the suit parcels as he wishes including evicting the defendants/applicants from the suit land, demolishing any structures thereon, temporary or permanent and/or selling the land to 3rd parties to offset the medical bills as averred in the replying affidavit. There will be nothing stopping him from executing the decree issued in his favor.
54. That even though an order of eviction and/or demolition of the structures on the suit land was not directly issued/awarded by the court, in my considered opinion, the effect of executing the decree would lead to the alleged eviction and/or demolition of the structures on the suit land.
55. In view of the foregoing, I find and hold that both the 1st and 4th defendants/applicants have sufficiently demonstrated the substantial loss they are likely to suffer to the required standard respectively.
56. The second element is whether the various applications were filed timeously without undue delay. The judgment in question was delivered on the 20th February, 2025 while the respective Applications were both filed on the 13th March, 2025, that is within 21 days from the date of the delivery of the judgment.
57. It is the finding of this court that there was no inordinate delay in filing the instant applications, and the same were filed timeously.
58. The final element is on the deposit of security for costs as the court may direct. The court in the case of Arun C. Sharma Vs Ashana Raikundalia T/A Raikundalia & Co. Advocates and 2 others (2014) eKLR, held that: -
- “ The purpose of the security under Order 42 is to guarantee due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor....civil process is quite different because in civil process the judgment is like a debt hence the applicant become and are judgment debtors in relation to the respondent. That is why any security given under order 42 rule 6 of the civil procedure rules acts as a security for the performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”
59. The 4th defendant/applicant expressed his willingness and readiness to deposit the security for costs as the court may direct.
60. The 1st defendant/applicant on his part did not comment and/or express his readiness and willingness to provide any security for the due performance of the decree.
61. The respondent on his part argued that the dispute between the parties has spanned for over 30 years, within which period the defendants/applicants were benefiting from their use of the suit land. It was



his contention that he should be allowed to enjoy the fruits of his judgment and thus urged the court to dismiss the application with costs.

62. This court however acknowledges that the subject matter in question is a parcel of land and not a money decree. I will therefore exercise my discretion in favour of both the 4th and 1st defendants/applicants and allow the application for stay but on condition that they provide security as will be directed at the end of this ruling.
63. In view of the foregoing, I find that both the 1st and 4th Applicants have satisfied the 3-limb test provided under the Civil Procedure Rules to the required standard.
64. Consequently, I accordingly find that the Notice of Motion Applications dated 13.03.2025 by the 4th defendant/applicant and by the 1st defendant/applicant respectively are merited and are hereby allowed on the following terms: -
 - a. An order for stay of execution be and is hereby issued against the judgment of this court dated 20.02.2025 and decree pending the hearing and determination of the intended appeal.
 - b. The 4th Defendant/Applicant is hereby directed to deposit Kshs. 200,000/= in court as security for Costs for the due performance of the decree within 30 days from the date of this Ruling.
 - c. The 1st Defendant/Applicant is also directed to deposit Kshs. 200,000/= in court as security for Costs for the due performance of the decree within 30 days from the date of this Ruling.
 - d. Failure by the applicants to comply with orders (b) and (c) hereinabove, Order (a) hereinabove shall automatically lapse.
 - e. Each party to bear their own costs of the Applications.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 25TH DAY OF SEPTEMBER, 2025.

HON. C. K. YANO

JUDGE

Ruling delivered in the presence of: -

Mr. Bittok for plaintiff.

Mr. Nyachiro for the 1st Defendant and holding brief for Mr. Momanyi for 2nd – 8th Defendants.

Court Assistant – Laban

