



REPUBLIC OF KENYA



KENYA LAW
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Namakhuli & 3 others v Werunga (Environmental and Land Originating Summons E002 of 2023) [2025] KEELC 6265 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6265 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2023
EC CHERONO, J
SEPTEMBER 25, 2025

BETWEEN

ALUMINAH NAMA KHULI 1ST DECREE HOLDER
ELIZABETH NANJALA WANJALA 2ND DECREE HOLDER
PRISCILLA SISKI MCHEYWA 3RD DECREE HOLDER
ALICE NANYAMA MACHUMBELI 4TH DECREE HOLDER

AND

WENANI SIMIYU WERUNGA JUDGMENT DEBTOR

RULING

1. The Applicant herein, Wenani Simiyu Werunga moved this Honourable court vide a Notice of Motion dated 5th May 2025 seeking the following orders;
 1. That this honourable court be pleased to issue an order staying the execution of the judgment dated 17-10-2024 and orders issued on 3-4-2025 against the Respondent/Applicant pending hearing and determination of Kisumu Appeal No. E093 of 2025
 2. Costs of this application be provided for.
2. The application is based on grounds that the Applicant has preferred an appeal before the court of Appeal at Kisumu which has high chances of success and unless the orders sought are granted, the Respondents will embark on execution thereby rendering the said appeal nugatory.
3. The Applicant stated that the subject of the intended appeal is a parcel of land registered in the names of several persons who are not parties to this suit and shall render the appeal nugatory.



4. The Applicant also stated that the appeal has high chances of success as several suits pertaining same title of land with same family have continued to be filed in courts and already exists conflicting decrees which is an issue pending before the Court of Appeal.
5. The Applicant further deposed that the dispute herein is over land and any change of title of the said land may cause substantial loss to the Applicant which may not be compensated in monetary terms and that he is ready and willing to abide by any terms/conditions this court may order pertaining security.
6. The Respondents opposed the application vide a replying affidavit by Aluminah Namakhuli sworn on 4th June, 2025 in which she deposed as follows;
 1. That the application under review is incompetent, misconceived, incurably defective, vexatious, spurious, frivolous and an abuse of the due court process.
 2. That the Plaintiff/Applicant working in cahoots with the one time intended party namely Joice Nasimiyu Wanyama have since the delivery of the Judgment herein filed a plethora of applications calculated at delaying and/or circumventing the execution of the decree herein.
 3. That the current application is yet another application that has the semblance of merit and ought to be dismissed at the earliest opportunity.
 4. That the Plaintiff/Applicant has never filed and/or served a notice of appeal from the decision of this honourable court delivered on the 3rd day of April 2025, therefore the purported appeal is a non-starter, incompetent and fatally defective.
 5. That the appeal exhibited being an appeal from an order is furthermore incompetent as no leave of the court was sought or granted yet it is mandatory statutory prerequisite prior to filing the appeal.
 6. That in any event the Ruling delivered on 3rd day of April 2025 was a negative order i.e a dismissal of the application hence there is nothing for this honourable court to stay.
 7. That the Plaintiff/Applicant has failed to exhibit a copy of the Ruling appealed against and instead exhibited a copy of the Judgment delivered way back on the 17th October 2023.
 8. That the application seeking a stay of execution of the Judgment has been brought after an inordinate, unreasonable, inexplicable, unjustified delay of 8 months.
 9. That a previous application dated seeking stay of execution of the judgment was dismissed therefore the plaintiff/Applicant is seeking to have a second bite at the cherry.
 10. That the averments in paragraphs 4 & 5 of the supporting affidavit contradict the Plaintiff/Applicant's own allegations in the application and suit in which he claimed to have a decree from Webuye Law Courts seeking to have the land transferring into his names jointly with the intended interested party.
 11. That the Plaintiff/Applicant is therefore speaking with both sides of his mouth and/or blowing both hot and cold at the same time seems to want to have his own cake and eat it all.
 12. That the appeal is frivolous not arguable and is merely calculated at denying the Decree holders the fruits of their judgment.
 13. That there are no conflicting decrees as one is a mere ploy the Plaintiff/Applicant together with the interested party meant to defraud the Defendants/Respondents of their land which ploy was busted by this honourable court.



14. That it is in interest of justice that litigation comes to an end

Plaintiff/Applicants Submissions

7. When the said application came for directions on 23rd July 2025, the parties agreed to have the same canvassed by way of written submissions. The submissions which had been filed by the Plaintiff/Applicant dated 20th June 2025 was deemed duly filed and served. In his submissions, the Plaintiff/Applicant stated that his earlier application for review was dismissed on 03/04/2025 for lack of sufficient reasons and that the main reason that made him revisit this honourable court and still disturbing him is that this suit was lodged in this honourable court when a similar suit had been determined by another court. That the aggrieved parties in that former suit never appealed but after several months, they decided to come up with this suit which is not an appeal from the decree that already exists.
8. He stated that after being dissatisfied with the Ruling on 03/04/2025, he lodged an appeal to the Court of Appeal in Kisumu being C.A No. E093 of 2025.

Defendants/Respondents Submissions.

9. The Respondents through the Firm of M/s Were & Co. Advocates filed submissions dated 29th July 2025 and averred that from the court record, the Defendant/Applicant filed a plethora of applications after judgment had been delivered in a desperate attempt to buy time and evade, circumvent, and/or scuttle the execution of decree herein and deny the Plaintiffs/Decree holders the fruits of their judgment. They argued that there is an inordinate delay in filing the current application for stay of execution of the impugned judgment delivered on 19th October, 2024. They submitted that the defendant ought to have moved the court without unreasonable delay. They argued that the Ruling delivered on 3rd April 2025 was a negative order incapable of being stayed. In conclusion, the Respondents submitted that the alluded appeal is a mere ploy since the Applicant never filed a Notice of Appeal as a prerequisite before filing the alleged appeal.

Legal Analysis and Decision

10. I have considered the Notice of Motion application, the supporting affidavit, the Replying affidavit, Applicants written submissions and the relevant law. The gist of the Applicant's application is for stay of execution of the judgment and decree of this Court pending hearing and determination of appeal lodged at the Court of Appeal at Kisumu being CA. No. E093 of 2025. This Court heard and determined this suit on merits between the Respondents and the Appellant and rendered itself vide a Judgment delivered on 17th October 2024. Aggrieved by the said Judgment, the Appellant/Applicant allegedly preferred an appeal to the court of appeal and has filed the present application for stay pending hearing and determination of the intended appeal. The application is brought under Order 22 Rule 22 of the *Civil Procedure Rules* which stipulates as follows;

" Rule 22(1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any order relating to the decree or execution which might have been made by the court of first instance; or appellate court if execution has been issued thereby, or if application for execution has been made thereto..."



11. It is clear from the above provisions of the law that before granting an order of stay, an Applicant must demonstrate that he requires a stay of execution for a reasonable period of time to enable him/her to apply to the appellate court if execution has been issued thereby. In the instant case, no evidence has been shown that a decree has been drawn or an order for execution issued. The Applicant has only annexed a copy of a taxed bill of costs.
12. Even assuming that this application is brought under order 42 Rule 6 of the *Civil Procedure Rules*, the Applicant must demonstrate that he will suffer substantial loss, that the application has been brought without unreasonable delay and 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. At paragraph 2 of his supporting affidavit, the Applicant confirmed that the impugned judgment was delivered by this court on 17/10/2024, almost seven months after the impugned judgment. A delay for seven months without explanation in my view is unreasonable. The Applicant has not also shown what substantial loss he stands to suffer if the stay of execution order is not granted. At paragraph 4 of the supporting affidavit, the Applicant stated that unless stay of execution of the impugned judgment/Decree is issued, the decree holders/Respondents may execute against a parcel of land registered in names of several persons any time from now who are not parties to this suit and shall render the Appeal nugatory. However, he has not given such security or undertaking as this court may order for the due performance of the decree as may be binding on him. It is imperative to note that this court has heard and determined the dispute between the parties on merits.
13. Whereas the Applicant has undoubted right of appeal, over the impugned judgment/Decree, his rights must be balanced with the rights of the decree holders/Respondents to enjoy the fruits of their judgment. In that regard, the judgment debtor/Applicant must bring himself within the confines of order 42 Rule 6 *CPR*. Having found that the Applicant has not established conditions for the grant of stay of execution orders under Order 42 Rule 6 *CPR* as well as Order 22 Rule 22 *CPR*, I find the Notice of Motion application dated 5th May 2025 devoid of merit and the same is hereby dismissed with costs to the Respondents.
14. Orders accordingly.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 25TH DAY OF SEPTEMBER, 2025.

HON. E. C. CHERONO

ELC JUDGE

In the presence of;

1. Defendant/Applicant-present
2. Mr. Were for the plaintiffs/Respondents
3. Bett C/A.

