



**Ongamoo v Obayo (Environment and Land Miscellaneous Case
E005 of 2025) [2025] KEELC 6504 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6504 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E005 OF 2025
A NYUKURI, J
SEPTEMBER 24, 2025**

BETWEEN

JOSPHAT AMAMBIA ONGAMOO APPLICANT

AND

WILLIAM OBAYO RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 18th February 2025 filed by the applicant seeking the following orders;
 - a. That this honourable court be pleased to certify this application as urgent and allocate an early date for inter – partes hearing on priority basis.
 - b. That this Honourable court be pleased to grant the appellant leave to file appeal out of time against the ruling delivered by Hon. J.R. Ndururi SPM in Kakamega CMC ELC No. 20 of 2020 pending hearing and determination of the application herein.
 - c. That an order of stay of execution be issued to stay or stop execution of the orders, decree and or other consequential orders arising from the ruling of Hon. J.R. Ndururi-SPM delivered on 22nd August 2024 in Kakamega CMC ELC No. 20 of 2020.
 - d. That costs of this application be in the cause.
2. The application is predicated on the supporting affidavit of the applicant dated 18th February 2025. The applicant’s case is that he filed Kakamega CMC ELC NO. 20 of 2020 which was partially determined through mediation against the respondent.



3. That he was aggrieved with the ruling in regard to the application dated 3rd June 2024. That the time within which to appeal against the said ruling has expired and that his appeal has high chances of success. He attached the mediation agreement; ruling of 6th July 2023; order of 22nd August 2024 and draft Memorandum of Appeal.
4. Though served, the respondent did not file any response to the application. The applicant filed submissions dated 24th June 2025 which the court has duly considered.

Analysis and determination.

5. The court has carefully considered the application, supporting affidavit, annexures thereto and submissions. It is clear from the application that the prayer for extension of time to file appeal out of time, is as of now spent, as the same was sought pending hearing and determination of the instant application. What remains therefore is the prayer for stay of execution. The applicant sought to stay orders issued by the subordinate court on 22nd August 2024 in Kakamega CMC ELC Case No. 20 of 2020. The stay sought is not a temporary stay pending determination of any suit or intended suit and or appeal or pending occurrence of any event. What the applicant seeks is to stay lawful orders of the lower court, when he has neither challenged them in any competent forum nor shown any intention to challenge them. He seeks stay of valid court orders on the premises that he is aggrieved with the same.
6. It is trite that execution is a lawful process that follows grant of an order, judgment or decree. Unless there is an appeal or intended appeal, or a justifiable lawful excuse, in my view there would be no basis for grant of stay, because a party who obtains orders of court and is then stopped from executing the same, for no lawful justification would have been denied their right to access to justice protected under Article 48 of *the Constitution*, which would then render such order a mere paper order.
7. Execution is a legal process which should not be unjustifiably or injudiciously halted. In the case of James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR, the court expressed itself thus:

“No doubt, in law, 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.”
8. In the instant case, the applicant’s reason that he is aggrieved with an order which he has not appealed against nor sought leave to appeal against out of time, is not, in my opinion reason enough to stay a valid court decision. In the premises, I find no merit in the application dated 18th February 2025, which I hereby dismiss with no order as to costs.
9. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 24TH DAY OF SEPTEMBER, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI



JUDGE

In the presence of;

Mr. Shaka holding brief for Mr. Khayumbi for the applicant

Mr. Munyendo for the respondent

Court Assistant- Delphine

