



REPUBLIC OF KENYA



KENYA LAW

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**Shah v Rop & another (Environment and Land Case E054 of 2021)
[2025] KEELC 6400 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6400 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E054 OF 2021
A OMBWAYO, J
SEPTEMBER 25, 2025**

BETWEEN

ANAND KANTILAL SHAH APPLICANT

AND

WILLY KIMAGUT ROP 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

RULING

1. This ruling is in respect of the Plaintiff/Applicant Notice of Motion application dated 16th May, 2025 which sought the following orders;
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of the intended appeal, this Honourable court be pleased to issue an order of stay of execution of the Judgment delivered on the 8th May, 2025 and the subsequent decree and all consequential orders arising therefrom.
 4. That costs of the application be provided for.
2. The application was supported by the affidavit of Anand Kantilal Shah sworn on 16th May, 2025. He stated that judgment was delivered on 8th May, 2025 in favour of the 1st Defendant/Respondent. He further stated that having been aggrieved by the judgment, he filed a notice of appeal. He also stated that he requested for the certified typed proceedings which have not been availed to aid in filing of the record of appeal. He stated that unless the orders sought are granted, the 1st Respondent may execute which will render the intended appeal nugatory. He added that he was also apprehensive that the 1st Respondent will pursue the eviction order. He stated that the Respondents will not suffer any



prejudice if the application is allowed. He further stated that he was willing to abide by any conditions of stay if directed by the court.

Response

3. The 1st Respondent filed his replying affidavit sworn on 10th June, 2025 where he averred that judgment was delivered in his favour on 8th May, 2025. He averred that the Applicant despite having obtained ex parte interim orders through concealment of material facts, never took occupation of the property. He added that the suit property remained vacant until 8th May, 2025 when the judgment was delivered. He averred that he then took possession of the suit parcel which the court found as the rightful owner. He also averred that issuance of the stay orders shall deprive him of his enjoyment of the fruits of the judgment and also expose him to substantial loss since he intends to develop the suit land. He averred that grant of the stay of execution orders would cause his substantial annual loss estimated at Kshs. 48 million for the period that the orders shall be in force. He averred that if the court would be inclined to grant the stay orders, that it orders that the same be for a very limited period. He urged the court to direct the Applicant to deposit into a joint interest earning account Kshs. 240 million being rental income for a period of 5 years and Kshs. 2,021,401.33 being his already tabulated party and party bill of costs. He also urged the court to direct that the Applicant deposits its title with the Deputy registrar until the appeal is heard and determined. In conclusion, he urged the court to dismiss the application with costs.

Submissions

4. Counsel for the Applicant filed his submissions dated 23rd May, 2025 where he identified two issues for determination. The first issue was whether the Plaintiff/Applicant's application is merited. He relied on Order 42 Rule 6 of the Civil Procedure Rules and the case of Jason Ngumba Kogu & 2 Others V Intra Africa Assurance Company Limited (2014) eKLR. It was his submission that substantial loss will result to the Applicant unless the court grants the stay orders. He submits that if the impugned judgment is executed, it would occasion irreversible dispossession of the Applicant from the land. He added that the suit land may equally be disposed off to third parties to the Applicant's detriment. He further relied on the case of James Wangalwa & Another V Agnes Naliaka Cheseto BGM Hc Misc Appl No. 42 of 2001. It was counsel's submission that the Applicant expeditiously lodged the present application thus demonstrated that he remained steadfast in his search for justice. He added that the Applicant was ready and willing to furnish security for costs as the court may direct. He submits that the Applicant has an arguable appeal with a high chance of success that will be rendered nugatory if the stay orders are not granted.
5. The second issue on costs, counsel relied on the case of Jasbir Sing Rai & 3 Others V Tarlochan Sing Rai & 4 Others and Section 27 of the *Civil Procedure Act*. He submits that the issue of costs is at the court's discretion.
6. Counsel for the 1st Respondent filed his submissions dated 11th June, 2025 where he relied on Order 42 Rule 6(2) of the Civil Procedure Rules and the case of Halai & Another V Thorton & Turpin (1963) Ltd [1990] eKLR that laid down the requirement for grant of stay of execution pending appeal. On the first issue of sufficient cause, he submits that the Applicant has not demonstrated sufficient cause to warrant issuance of the stay orders since he has neither attached a draft memorandum of appeal to signify the nature of the ground he intended to canvass on appeal. He cited the case of Makicher General Construction Limited V Communication Graphics Limited [2021] eKLR.
7. On the second issue of substantial loss, he relied on the case of Century Oil Trading Company Limited V Kenya Shell Limited [2007] eKLR. He submits that the Applicant has not provided any evidence



to show that he is in occupation of the suit land thus no substantial loss likely to occur as alleged. He submits that the Applicant not in possession of the suit land, there is no risk of eviction. He relied on Section 107 of the *Evidence Act*. He urges the court to dismiss the unsubstantiated apprehension for lack of evidence.

8. The third issue of security, he submits that the 1st Respondent has since been denied possession and use of the suit parcel without any justification. He submits that the court should endeavor to protect him as a successful litigant and to partake the fruits of the judgment. He submits that the Applicant is undeserving of stay orders since he has not provided security or details of the security he intends to furnish. He cited the cases of *Focin Motorcycle Company Ltd V Ann Wambui Wangui & Another [2018] eKLR* and *Mwaura Karuga t/a Limit Enterprises V Kenya Bus Services Ltd & 4 Others [2015] eKLR*.
9. He submits that in the event the court grants the orders sought, the same would deprive him of his annual rental income of Kshs. 48 million even when the intended appeal is not arguable. He relied on the Supreme court cases in *Torino Enterprises and Dina Management Ltd*. He submits that should the court be inclined to grant the stay orders, that it directs the Applicant to deposit Kshs. 240 million being the estimated loss of revenue the 1st Respondent would suffer for an approximate period of 5 years when the appeal would still be pending. In conclusion, he urged the court to dismiss the application with costs.

Analysis and determination

10. The Court has considered the application and the main issue for determination is whether orders of stay of execution pending appeal should issue.
11. Order 42 Rule 6 (1)(2) of the Civil Procedure Rules 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.
12. In *RWW V EKW [2019] eKLR* the court held as follows:

...the purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
13. For this court to grant an order of stay of execution, the Applicant must demonstrate that he filed the application under consideration without unreasonable delay, that he will suffer substantial loss if the orders sought are not granted and that he is willing to deposit security for costs. It is also noteworthy that the court should endeavor to balance the interests of both the successful party in litigation so as not to unnecessarily bar them from enjoying the fruits of judgment and that of the Applicant whose appeal may succeed and be rendered nugatory if stay of execution is not granted.
14. On the issue of delay, a perusal of the court record shows that judgement in the matter was delivered on 8th May, 2025 and the Applicants filed a Notice of Appeal on 16th May, 2025. It is this court’s



view that the same was filed within a month hence the time was reasonable and without delay. It is noteworthy that the present application was filed on 16th May, 2025 translating to a period of less than a month from the date of judgment. This court is of the view that that the period does not amount to inordinate delay.

15. The Applicant has to also demonstrate that unless the court grants stay of execution orders pending appeal, he stood to suffer substantial loss. The Applicant argues that he stood to suffer substantial loss in the event the stay orders are not granted. It was his contention that he was apprehensive that the 1st Respondent would pursue an eviction order thus unable to exercise his right of appeal to its conclusion.
16. The 1st Respondent denied the claims by the Applicant and stated that the suit property was never occupied by any of the party until after the judgment was delivered when the 1st Respondent took possession. He contends that the appeal lacked merit and added that the court had found that he was the registered owner of the suit parcel which he intends to develop.
17. It is worthwhile to note that the Respondent was not opposed to the stay orders granted on condition that the Applicant deposits a sum of Kshs. 240 million in a joint account held by all advocates.
18. On the issue of security of costs, the Applicant has expressed his willingness to offer security of costs.
19. In the case of Siegfried Busch vs MCSK [2013] eKLR, the court held as follows:

A superior court to which an application has been made must recognize and acknowledge the possibility that its decision for refusal to grant a stay of execution could be reversed on appeal. It would be best in those circumstances to preserve the status quo so as not to render an appeal nugatory. Even in doing so, the court should weigh this against the success of a litigant who should not be deprived of the fruits of his judgment...”
20. This court is of the view that grant of stay remains a discretionary order that must consider the fact that the court ought not to make a practice of denying a successful litigant the fruits of their judgment.
21. In the upshot, this court shall exercise its discretion and order of stay of execution of this court’s judgement delivered on 8th May, 2025 on the following conditions;
 - a. The Applicant to deposit a sum of Kshs. 3,000,000/= as security for costs in a fixed joint interest earning account in the names of both counsel for the parties within 21 days from the date of this ruling. In the alternative, the applicant to provide security equivalent to the amount to be deposited in court.
 - b. The Applicant shall compile, file and serve a record of appeal within 60 days and move the Court appropriately towards the finalization of this Appeal within 180 days from the date of this ruling. In the event the Applicant fail to abide by any of the above stated conditions within the fixed time lines there will be an automatic lapse of the stay of execution herein irrespective of whether or not one condition shall have been met earlier than the failure of the latter.

Each party shall bear its own costs to the application. It is so ordered.

SIGNED BY/FOR:

HON. JUSTICE ANTONY O. OMBWAYO

