



REPUBLIC OF KENYA



**Tireito v Lagat & 2 others (Environment and Land Case 441 of 2012)
[2025] KEELC 6213 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 441 OF 2012
CK YANO, J
SEPTEMBER 25, 2025**

BETWEEN

JOSEPH TIREITO PLAINTIFF

AND

JACOB KIPSUGUT ARAP LAGAT 1ST DEFENDANT

ANNE JEPKEMBOI NGENY 2ND DEFENDANT

STEPHEN KIPYEGO LEL 3RD DEFENDANT

RULING

1. The Application coming for consideration in this Ruling is the Plaintiff/Applicant's Notice of Motion dated 10th March, 2025 seeking the following orders;
 1. Spent
 2. That there be a stay of execution of the order and/or ruling of the Hon. Justice E. O. Obaga delivered on 28.02.2025 pending the hearing and determination of the appeal lodged by the Applicant in the Court of Appeal.
 3. That such order of stay of execution do apply till the finalization of the appeal filed herein at the Court of Appeal.
 4. Costs of this Application be provided.
2. The Application is supported by the Plaintiff/Applicant's Affidavit of even date. In the said Affidavit, the Applicant averred that the ruling delivered on 28th February, 2025 opened room for the Respondents to resume use, occupation and development of the disputed land. He explained that by a consent recorded by Hon. Justice Omondi Tunya (retired) on 13th June, 2002 and judgment delivered on 26th June, 2014 by Hon. Justice Munyao Sila, he is the owner of title No. Eldoret Municipality



- Block 25(Luliet)/1 measuring 24 Acres (hereinafter referred to as “Luliet 1”), as well as 2½ Acres to be excised from title No. Eldoret Municipality Block 25(Luliet)/2 (hereinafter referred to as “Luliet 2”).
3. He averred that the 2nd Respondent lodged an appeal in the Court of Appeal which was dismissed. He deponed that the 3rd Respondent, who claims a 50*126 feet portion of Luliet 2, also lodged an appeal that is yet to be heard to date, for which reason the 2nd and 3rd Respondents have no claim on his land. He referred to various instances of contempt of the court orders by the 2nd and 3rd Respondents claiming that the Respondents have deprived him of his rightful portion of the suit property, including commencing construction on his 2½ Acres.
 4. The Applicant claimed that the Respondents are bound by the judgment and previous rulings of the Court and that the issue is now res judicata, yet the Respondent were coming up with new cases. That to avoid issuing orders that may conflict with the previous orders and dishonour the court, it is fair that the orders of stay of execution be granted.
 5. The 2nd Defendant/Respondent opposed the Application through a Replying Affidavit dated 24th March, 2025. She deponed that the Applicant filed an application dated 15th May, 2024 seeking to have the 2nd and 3rd Respondents committed to civil jail for contempt, as well as orders that the County Surveyor enforce the judgment of this court. That vide ruling of 28th February, 2025, the court dismissed the application but allowed prayer 4 thereof, which directed the county Surveyor to place beacons on the excised portion.
 6. The 2nd Respondent avers that save for the said prayer 4, the order dismissing the Application is a negative order incapable of being executed. Further, that the said Prayer 4 granted the Applicant what he had sought in the Application, yet he now wants to stay that same order. He claimed that the order had already been executed by the County Surveyor and beacons placed on the 2½ Acres, hence there is nothing to stay. She accused the Applicant of misleading the court yet he was informed by the County Surveyor of the intention to implement the court order.
 7. The 2nd Respondent argued that the Applicant had not met the conditions for grant of the orders sought. She added that the issues in the Applicant’s Affidavit are the same ones raised in his Application of 15th May, 2024, which were determined in the Ruling of 28th February, 2025, thus this court has no jurisdiction to delve into them, or the merits of the intended Appeal. She asked that the interim orders be vacated for reason that they were issued without full disclosure of the true position on the ground, and that the Application be dismissed with costs.
 8. The 3rd Respondent’s response is by way of a Replying Affidavit dated 1st April, 2025. He deponed that he purchased a portion of Luliet 2 measuring 50*126 feet. That Justice Sila Munyao adjudged that a portion measuring 2½ acres be excised from the portion of Luliet 2 and that it would be incorporated into Luliet 1, which judgment was affirmed by the Court of Appeal. He states that during a court ordered site visit conducted by this Court, a survey was conducted by order of the court on the same day, in the presence of the Hon. Justice Onyango, the parties herein and their legal representatives. That the court directed the Surveyor to place beacons and ensure that the disputed houses belonging to the Applicant fell within the 2.5 Acres and the Plaintiff’s desire that the portion adjoin the main road where possible.
 9. The 3rd Respondent avers that the County Surveyor complied and filed a report on 22nd November, 2022. He averred that this court has duly exercised its authority under Section 34 of the [Civil Procedure Act](#) pertaining to execution. He pointed out that no appeal had been lodged against the orders of Justice Onyango. That the County Surveyor complied with the orders of 28th February, 2025 by placing beacons on the 2½ Acres and completing execution of the Judgment by Hon. Sila Munyao J, hence the



Application had been overtaken by events. In addition, that the allegations of non-compliance with prior rulings were addressed and resolved by Hon. Onyango J. and Hon. Obaga J. and are incapable of further adjudication by this court.

10. He deponed that he incurred substantial financial loss and wastage of construction materials, and should he be restrained from constructing, he will continue to suffer irreparably since the decree as executed ensured that his portion fell outside of the 2 ½ Acres given to the Applicant. That the Applicant on the other hand will suffer no loss as the title to be issued over the 2 ½ Acres will be in his name and his interests will remain unaffected pending the appeal. He termed the instant application an attempt by the Applicant to re-litigate matters already settled by court, undermining the principle of finality and judicial economy. The 3rd Respondent alleged that allowing it would occasion an injustice and that it should be dismissed with costs.
11. In response to the 2nd and 3rd Respondent's Affidavits, the Applicant filed two Supplementary Affidavits, the first of which is dated 27th March, 2025. He alleged that the orders allow the Respondents to obtain title against the terms of the judgment. He also stated he never agreed to the alleged survey reports and neither were they adopted by the court. He complained that the portion being delivered to him vide the Survey Report is not the specific portion given to him in the decree, and amounts to evicting him from his land. He argued that execution is not complete and the court is not functus officio until he gets his new title and there is a new map, which is yet to be done. He added that substantial loss will occur if he loses his land, and that the visit by the County Surveyor was irregular as it ought to have included the Land Registrar who is involved in the extraction of new title deeds.
12. In the second Supplementary Affidavit dated 10th May, 2025, the Applicant deponed that the survey is an aspect of the execution process, and that the judgment also issued a permanent injunction which is being disobeyed. He asserted that as long as the land has not been handed to him, he still has a right to be heard under Section 34. He alleged that his views were not sought in the survey reports, which are fraught with errors and amend the judgments of this court and of the Court of Appeal. He accused the Respondents of relying on procedural technicalities to deny him his land contrary to Article 159 of *the Constitution*. He states that he has suffered immensely from the non-use of his land and he should not be allowed to suffer further.

Submissions:

13. On 2nd April, 2025 the court directed that the Application be canvassed by way of written submissions and the parties complied.

Applicant's Submissions;

14. The Applicant filed his submissions dated 19th May, 2025. Counsel for the Applicant submitted that the instant Motion was filed without undue delay, just 12 days after the delivery of the Ruling. Counsel submitted that execution of the orders will occasion substantial loss as it will lead to the Applicant, who is the bona fide owner, losing his land and will also render his appeal nugatory. He relied on the following cases:- Tropical Commodity Suppliers Limited & Others vs International Credit Bank (in liquidation) (2004) EA, RWW vs EKW (2019) eKLR and Butt vs Rent Restrictions Tribunal (1979) eKLR.
15. On the issue of security for the due performance of the decree, Counsel submitted that the Applicant had in his Supplementary Affidavits expressed his willingness to abide by any condition that may be set by the court in that regard. Counsel argued that this assurance by the Applicant is sufficient to satisfy the third requirement under Order 42 Rule 6(1)(b) of the Civil Procedure Rules and he cited the case



of John Odongo vs Joyce Irungu Muhatia (2015) eKLR. Counsel urged that the Applicant had thus satisfied all the conditions necessary for the grant of an order of stay and his Application ought to be allowed as prayed.

2nd Respondent's Submissions;

16. The 2nd Respondent's Submissions are dated 28th April, 2025. In those submissions, Counsel reiterated that save for prayer 4 of the ruling of 28th February, 2015, the rest are negative orders incapable of being stayed, thus the application should be dismissed with costs. Counsel cited Sonalux Limited & Another vs Barclays Bank Kenya Limited & 2 Others (2008) KECA 257 (KLR), Kaushik Panchamatia & 3 Others vs Prime Bank Limited & Another (2020) eKLR and In Re: Charles Levitan (2001) eKLR. Counsel reiterated that the said Prayer 4 granted the Applicant what he had sought and he cannot now turn around to seek stay. Further, that the said order has been implemented by the County Surveyor, and the Applicant has received the fruits of his judgment as the 2½ is no longer occupied by the Defendants and there is nothing to stay.
17. Counsel submitted that there was no requirement that the Survey Report be agreed by the parties or that it be adopted by the Court, neither did it require the County Surveyor to report to the court which option was implemented. Counsel argued that the Applicant is asking the court to stop the execution of sections/limbs of the decree, which cannot be done without seeking a stay of execution of the decree itself, an action that he argued this court has no mandate to undertake. Counsel relied on Peris Wakiuru Gaita vs Grace Wanjiru Mbugua (2010) eKLR.
18. Counsel also submitted that the issues raised herein are not only irrelevant, but they were also raised in the application of 15th May, 2024 and were conclusively dealt with hence they should be disregarded. Counsel was of the opinion that no substantial loss has been alleged or established, and that no security for costs has been offered. Counsel concluded that the Application has no merit and ought to fail with costs to the 2nd Respondent. Counsel cited Machira t/a Machira & Co. Advocates vs East African Standard (2002) eKLR.

Analysis and Determination:

19. The Court has considered the application and the replies thereto as well as the written submissions filed on behalf of the parties. The main issue arising for determination is whether this Court should grant the order of stay of execution of the orders arising from this court's ruling delivered on 28th February, 2025 pending the Applicant's intended appeal.
20. To better understand the different positions taken by the parties in this Application, a brief background of this case is necessary. This suit was commenced by way of Plaint dated 3rd June, 1999 and Amended on 4th September, 2001. The Plaintiff sued the Defendants seeking among other reliefs, a permanent injunction to restrain them from trespassing into or dealing with his undivided share of what was then known as L.R. No. 779/359 measuring 26½ Acres, as well as damages for trespass. The said land had been subdivided into two portions which have been referred herein as Luliet 1 and Luliet 2.
21. While the suit was pending, Justice Omondi Tuya recorded a consent between the parties that the Applicant would have possession of the 26½ Acres pending the hearing and determination of the suit.
22. Justice Munyao Sila delivered his judgment on 26th February, 2014 where he held that the Plaintiff/Applicant was entitled to 2.5 Acres to be excised from Luliet 2. He went an extra mile and acknowledged that the Plaintiff was seeking vacant possession of certain houses that were occupied by his sons, which the Applicant had been in occupation of since he purchased the suit land. The learned



judge thus held that the Plaintiff's two houses fell within the 2½ Acres claimed by the Plaintiff, which were at the time standing on the 2nd Defendant/Respondent's title. The learned judge stated in his judgment that:-

“ ... This 2.5 Acres is in the title Eldoret Municipality Block 25/2 owned by the 2nd Defendant. The 2nd Defendant's title thus needs to be altered and reduced by 2.5 Acres. I am further of the view that his 2.5 Acres comprises what is currently occupied by the Plaintiff and it is where the disputed houses are located.”

23. Justice Munyao Sila then directed the District Land Registrar and the District Land Surveyor Uasin Gishu to excise the 2.5 Acres of Luliet 2 and include it in the title for Luliet 1, and further that a new title for 26.5 Acres be issued to the Applicant over Luliet 1. He also issued a permanent injunction restraining the Respondents from interfering and/or dealing with the Applicant's 26.5 Acres.
24. It is clear that the Consent Order recorded by Justice Omondi Tunya was to last until hearing and determination of the main suit. That order ceased to have effect once judgment was delivered on 26th February, 2014 and the court expressly indicated in its judgment that the consent order recorded before justice Omondi Tuya was discharged. I will say nothing further on this consent order, noting that Justice Obaga comprehensively dealt with this issue in his ruling of 28th February, 2025.
25. It is worth noting that the 2nd Respondent herein lodged an Appeal in the Court of Appeal against the judgment of Justice Munyao. The Court of Appeal in a judgment delivered on 9th July, 2021 dismissed the Appeal for lack of merit and upheld the judgment of the trial court, thereby cementing the Plaintiff's right to the 2½ Acres comprised in Luliet 2.
26. Thereafter, the Plaintiff/Applicant filed an Application dated 15th May, 2024 claiming that the Defendants/Respondents were in contempt, and asking the court to direct the County Surveyor to affix beacons on the boundary to the 2.5 Acres decreed to belong to him. He also asked that the Deputy Registrar be directed to sign all documents and/or requirements to effect the judgment.
27. Justice Obaga delivered his ruling with respect to that Application on 28th February, 2025 directing the County Surveyor to proceed and place beacons on the excised 2.5 Acres, in accordance with the three options identified in the Survey Report of 19th December, 2022. This order gave effect to the Judgment of this court as upheld by the Court of Appeal. He dismissed the rest of the prayers in the Notice of Motion dated 15th May, 2024.
28. With regards to the dismissed prayers, the dismissal does not require any of the parties to do anything, or to refrain from doing anything. It is therefore a negative order incapable of execution and the court cannot order stay of execution of that negative order. The Court of Appeal in *Kenya Commercial Bank Limited vs Tamarind Meadows Limited & 7 Others* (2016) eKLR, quoted with approval the holding in *Raymond M. Omboga vs Augustine Pyan Maranga Kisii HCCA No. 15 of 2010*, where it was held that:

“The Order dismissing the application is in the nature of a negative order and is incapable of execution save, perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is capable of execution, there can be no stay of execution of such an order... The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the applicant has lost. The refusal simply means that the applicant stays in the



situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise...”

29. What concerns this court is the prayer 4 that was allowed by the court, directing the placing of the beacons on the 2.5 Acres portion belonging to the Plaintiff/Applicant. This is the only relief capable of being stayed.
30. Order 42 Rule 6(1) & (2) of the Civil Procedure Rules lays down the threshold in an application for stay of proceedings pending appeal thus:-
6. Stay in case of appeal [Order 42, rule 6]
- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) No order for stay of execution shall be made under subrule (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.
31. Order 42 rule 6 requires a party who seeks stay orders to demonstrate first that substantial loss may result to the applicant, that the application has been made without undue delay and that security has been provided.
32. The first requirement is that an Applicant must show that he stands to suffer irreparable harm if the order of stay is not granted. The Applicant herein has alleged that if the Application herein is not allowed, he stands to lose the 2.5 Acres adjudged to belong to him. The Applicant also alleges that he was not allowed to give his views in the Survey Report and that it was not adopted by the court.
33. In this regard, I have looked at the Survey Report erroneously dated 19th September, 2022 and note that the Applicant was present during the site visit when the survey was conducted, together with his Advocate. In fact, the Report clearly indicates that it is Joseph Kiplagat Tireito, the Plaintiff herein, who disputed the boundary prompting the Hon. Judge Onyango to direct the County Surveyor to give several options for consideration. The allegation that his views were not heard nor considered, is therefore false.
34. In addition, pursuant to the ruling of 28th February, 2025, the County Surveyor by letter dated 7th March, 2025 addressed to the Area Chief, Kimumu Location and copied to the parties herein, informed them that he would visit the land with the intention of implementing the order. He asked them to be present during the exercise to be conducted on 14th March, 2025 to ensure that it went on smoothly.



35. Photographs dated 14th March, 2025 are annexed to the 2nd Respondent's Replying Affidavit, showing that the beaconing exercise was undertaken on the stated date. The Applicant, it appears, never took the time to attend as advised, even knowing that the exercise had been ordered by the court pursuant to his own Application. The Applicant was given an opportunity to appear and make any objections, but he failed to do so.
36. Furthermore, a closer look at the Applicant's pleadings reveals that the Applicant's objections seem to arise from the contention that he is being pushed away from the main road. At paragraph 13 of his Supporting Affidavit herein, the Applicant pleads:
- “That upon the county surveyor visiting the land on 14.06.2022 in order to excise the 2.5 Acres, the 2nd and 3rd Respondents have refused to allow the process to conclude with my rightful 2.5 Acres, instead pleading that I, the plaintiff, be given a portion away from the road depriving me of my land measuring 2½ Acres, which I have occupied since 1971 and as adjudged by the Court in the judgement and ruling earlier made.”
37. No proof has been tabled to show that the land excised for the Plaintiff is not the land that was adjudged to belong to him. In any event, neither the judgment of Court of Appeal nor that of this Court specifically ordered that the 2.5 Acres must touch the main road, only that the Applicants houses fall into the excised portion. Therefore, any of the three options given in the said survey report would have sufficed. For this reason, the Applicant cannot claim that he is being denied his land.
38. As to the allegation that the report was not adopted by the court, I note that in the ruling of 28th February, 2025, Justice Obaga held at page 12 that:-
- “ 38. The Applicant is seeking an order of this court that the County Surveyor does the beaconing in accordance with the judgment. It is important to note that the report 13th July, 2022 was done in execution of the judgment. The excision of the 2.5 Acres took into account the houses as per the judgment. The Applicant rejected this report. ...
39. Another survey was carried out giving three options. This is when the Applicant started resisting the directions of the court by asking Justice Onyango to recuse herself from the case including petitioning the Judicial Service Commission. It is clear that the Applicant is intent on carrying out a fresh survey to which he will agree with, this is clear from his position that he is being pushed away from the road. ...
40. This court will not order another survey to be carried out when it is clear that the two survey reports on record had been done in strict compliance of the court judgment.”
39. Justice Obaga in his ruling herein was clear that the beacons to be placed on the land should be in accordance with the three options identified by the Surveyor in the Survey Report dated 19th December, 2022. This is the report that was erroneously dated 19th September, 2022 that gave three Options for excising the land, two of which ensured the land touched the main road. In effect therefore, through that ruling, Justice Obaga officially adopted the said report and directed that beacons be placed on the land.
40. The Applicant also alleges that his Appeal will be rendered nugatory if the orders are not granted. It is interesting to note that the Applicant has lodged an appeal against a ruling that was essentially decided



in his favour. In his Application dated 15th May, 2024 the Applicant sought an order that the County Surveyor to place beacons on the boundaries of the 2.5 Acres, which prayer was allowed. And although as he claims it is only one aspect of the execution of the judgment, it still brings him closer to realising the fruits of his judgment. Ironically, the Applicant has called the Respondents indefatigable litigants, when in real sense, he is the one who from the record has persistently frustrated the efforts to realise the fruits of his own judgment.

41. All in all, I do not see how allowing the implementation of the order will render the Appeal nugatory. I also do not see the harm that will be visited on the Applicant by failure to grant the said order. If anything, he has his judgment granting him the 2.5 Acres and the order sought to be implemented is meant to enforce that judgment.
42. The second requirement is that the Application for stay must be made without unreasonable delay. The impugned ruling herein was delivered on 28th February, 2025 and the instant application was filed just 10 days later on 10th March, 2025. I am therefore satisfied that the application was filed without undue delay.
43. On the issue of security, this court has the discretion to make appropriate orders to serve the interest of justice. I am guided by the case of Focin Motorcycle Co. Limited vs Ann Wambui Wangui & Another (2018) eKLR, where the court held that:-

“Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.”
44. Counsel for the Applicant submitted that the Applicant had in his Supplementary Affidavits dated 27th March, 2025 and 10th May, 2025 expressed his willingness to be bound by any conditions that the court may set for the grant of the order of stay. I have looked at the said Supplementary Affidavits alongside the Supporting Affidavit. The Applicant said a lot in those Affidavits, but the one thing he did not do is express his willingness to be bound by any conditions of this court with regards to the issue of security for costs. That being the case, it follows that he has not satisfied this requirement for grant of an order of stay.
45. Of the three requirements for grant of an order of stay of execution laid out at order 42 Rule 6 of the Civil Procedure Rules, the Applicant has only met one, that is on the filing the application without undue delay. Having failed to meet the other two requirements, the result is that the prayer for a stay of execution pending Appeal as sought in the Applicant’s Application cannot issue.
46. In any event, going by the Respondents Affidavits, the placing of beacons has already been done, and I have seen the photographs annexed by the 2nd Respondent dated 14th March, 2025 as proof that the County Surveyor went to the ground and implemented the order, a fact that the Applicant has not denied. If that be the case, then essentially there is nothing to stay.

Orders:

47. In the circumstances, the Plaintiff/Applicant’s Notice of Motion dated 10th March, 2025 lacks merit, and the same is dismissed with costs to the Defendants/Respondents.
48. Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 25TH DAY OF SEPTEMBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Dr. Chebii for plaintiff.

Ms. Chebet for 2nd Defendant.

Mr. Kamau for 3rd Defendant.

No appearance for 1st Defendant.

Court Assistant - Laban.

