



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kaloki v Kiagi & 4 others (Land Case Appeal E005 of 2025)
[2025] KEELC 4467 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4467 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE APPEAL E005 OF 2025**

**YM ANGIMA, J
JUNE 12, 2025**

BETWEEN

CHRISANT MULILI KALOKI APPELLANT

AND

PAUL ONYANGO KIAGI 1ST RESPONDENT

COUNTY GOVERNMENT OF MOMBASA 2ND RESPONDENT

CECILIA WANGARI KIHARA 3RD RESPONDENT

BRAMWEL LIGAMA B. SHITSAMA 4TH RESPONDENT

**LJ MANGHNAN, HABHAN SWALEH T/A SACHDEVA NABHAN SWALEH
ADVOCATES 5TH RESPONDENT**

RULING

A. Appellant's application

1. By a notice of motion dated 10.02.2025 filed pursuant to Order 51 Rules 1& 2, Order 42 Rule 6 of the Civil Procedure Rules (the Rules) and all enabling provisions of the law, the appellant prayed for a stay of execution of the decree of the trial court in Mombasa CMCC No.2381 of 2018 as well as a stay of the order for payment of the costs of the 2nd, 3rd and 5th respondents.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the appellant on 07.02.2025. The appellant contended that he stood to suffer substantial loss unless a stay of execution was granted. It was his case that he was an innocent purchaser of the suit property which he sold to the 1st respondent who had a valid title and possession of the land. He was also apprehensive that unless a stay was granted in respect of the costs awarded to the 2nd, 3rd and 5th respondents then he might lose out on his money because he might be liable to recover the same in event of his appeal being successful.



B. Responses to the application

3. The 1st respondent filed a replying affidavit sworn on 12.03.2025 in opposition to the application. It was stated that the appellant had not demonstrated any substantial loss he stood to suffer in the absence of stay. The court was urged to balance the rights of a successful decree holder against those of the appellant. As a result, the court was urged to dismiss the application.
4. The 2nd respondent filed grounds of opposition dated 18.03.2025 in opposition to the application. It was contended that the application was frivolous, vexatious and an abuse of the court process. It was further contended that the appellant had not satisfied the conditions for the grant of a stay pending appeal. The court was consequently urged to dismiss the application.
5. The 8th respondent filed grounds of opposition dated 18.03.2025 in opposition to the application for stay of payment of costs. It was contended that the application was frivolous, vexatious and an abuse of the court process. It was stated that the appellant had not demonstrated the requirement of substantial loss and that he had not provided any security for payment of the costs should the appeal ultimately fail.

C. Directions on submissions

6. When the matter came up for directions it was directed that the application shall be canvassed through written submissions and the parties were given an opportunity to file and exchange their respective submissions. However, the record shows that none of the parties had filed submissions by the time of preparation of the ruling.

D. Issues for determination

7. The court has perused the appellant's notice of motion dated 10.02.2025, the 1st respondent's replying affidavit as well as the grounds of opposition filed by the 2nd and 5th respondents. The court is of the view that the following are the main issues which arise for determination herein;
 - a. Whether the appellant has satisfied the requirements for a grant of stay pending appeal.
 - b. Who shall bear costs of the application.

E. Analysis and determination

Whether the appellant has satisfied the requirements for the grant of stay pending appeal

8. The principles to be considered in an application for stay pending appeal are set out in Order 42 Rule 6 (2) of the Rules as follows;

“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.”
9. The court has considered the fact that the decretal amount the appellant is required to pay the 1st respondent is about Kshs. 9,336,900/= plus costs and interest. The court is of the view that the said amount is quite substantial and if paid directly to the 1st respondent, the appellant may find it difficult



to recover the same should his appeal be successful. The court is thus of the view that the safer way to ensure that both the appellant and the respondents shall have the money available depending on the outcome of the speed, is to have the money deposited in a joint interest earning account in the names of their advocates.

10. Regarding the prayer for a stay for the costs awarded to the 2nd, 3rd and 5th respondents, the court is of the opinion that a similar safeguard would be in order. The appellant should similarly deposit the assessed amounts into joint interest earning accounts in the names of the concerned advocates. That would be the best way of ensuring that the decretal amount is safeguarded whilst the appellant exercises his right of appeal.

Who shall bear the costs of the application

11. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court is of the view that since the main appeal is yet to be heard, the appropriate order to make on costs is that costs shall abide the outcome of the appeal.

F. Conclusion and disposal orders

12. The upshot of the foregoing is that the court finds merit in the appellant's application for stay pending appeal. As a result, the court makes the following orders for disposal thereof;
 - a. There shall be a stay of execution of the decree of the trial court in Mombasa CMCC No. 2381 of 2018 for a period of 2 years from the date hereof, or until the hearing and determination of the appeal, whichever comes first and on the following conditions;
 - i. The appellant shall deposit the entire decretal amount inclusive of costs and interest due to the 1st respondent in an escrow account in the joint names of his advocates and the advocates for the 1st respondent.
 - ii. The appellant shall deposit the entire amount of costs due to the 2nd, 3rd and 5th respondents in separate escrow accounts in the names of the appellant's advocate and the respective advocates for the 2nd, 3rd and 5th respondents.
 - iii. The appellant shall deposit the said sums within 45 days from the date hereof in default of which the stay shall lapse.
 - iv. If the appellant had already deposited the sum of the Kshs. 1,500,000/= in court as ordered 12.02.2025 on account of the 1st respondent then the amount to be deposited in the escrow account shall be set off against that amount.
 - b. Costs of the application shall abide the outcome of the appeal.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 12TH DAY OF JUNE, 2025.

.....

Y. M. ANGIMA



JUDGE

In the presence of:

Gillian - Court assistant

No appearance for the appellant

Mr. Mkomba for the 1st respondent

Ms. Muema for the 2nd respondent

No appearance for the 3rd, 4th and 5th respondents.

