



**Kahungu v Wanyonyi & 2 others (Environment and Land Case
E004 of 2023) [2025] KEELC 6909 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E004 OF 2023**

CK NZILI, J

OCTOBER 13, 2025

BETWEEN

JOSEPH KAMAU KAHUNGU PLAINTIFF

AND

ISAIAH WANYONYI 1ST DEFENDANT

LAND REGISTRAR, TRANS-NZOIA COUNTY 2ND DEFENDANT

**LAND ADJUDICATION OFFICER TRANS NZOIA COUNTY ... 3RD
DEFENDANT**

RULING

1. By an application dated 17/6/2025, the court is asked to stay execution of the judgment and the consequential orders delivered on 16/6/2025, to allow the maize plants at the flowering stage belonging to the applicant to fully mature and be harvested pending the hearing and determination of the intended appeal. The reasons are contained on the face of the application and in a supporting affidavit of Joseph Kamau Kahungu, sworn on 17/6/2025.
2. It is deposed that the plaintiff's suit was dismissed and the 1st defendant's counterclaim allowed, and an appeal has been preferred. The applicant deposes that immediately after the judgment on 16/6/2025, various armed persons invaded the land, threatened to cut the maize with machetes, thereby posing a serious threat to his agricultural investment and livelihood, which, if not stopped, will make him suffer financial loss and undue hardship.
3. The applicant deposes that in view of the prevailing economic challenges and the rising cost of investing in agricultural activities such as ploughing, planting, and weeding, the court should stop the invasion or destruction since the armed persons have threatened to come back to the land and destroy the maize plantation. The applicant deposes that unless the orders sought are granted, his intended appeal will be rendered nugatory.



4. The application is opposed on grounds of opposition dated 22/7/2025 for not meeting the conditions set in Order 42 of the Civil Procedure Rules, that the court is functus officio, that the crops on the suit land form part of the land and vest in the lawful owner; and that the application is an abuse of the court process.
5. The applicant relies on written submissions dated 22/7/2025. Reliance is placed on Francis Ndahebwa Twala v Ben Nganyi [2018] eKLR, Abraham Lenauia Lenkeu v Charles Katekeyo Nkaru [2016] eKLR, Owano v Owano [2022] KECA 47 [KLR] (4th February 2022) (Ruling), Kenya Shell Ltd v Benjamin Karuga & Another [1986] eKLR, Rhoda Mukuma v John Abuoga [1988] eKLR, James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, RWW v EKW [2019] eKLR and Machira T/A Machira & Co. Advocates v EA Standard [2002] KLR 63.
6. The ingredients to grant a stay of execution are three. The Execution is a lawful process. It does not, per se, amount to substantial loss. An applicant must establish other factors to show that 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. See James Wangalwa & Another v Agnes Naliaka Cheseto (supra).
7. To refuse or grant a stay order is a discretionary power. See RWW v EKW (supra). A party must demonstrate through tangible and cogent evidence how the substratum of the appeal shall dissipate in the absence of stay orders. It is not enough to allege irreparable damage without proof. The rights of the successful party in enjoying the fruits of his judgment, as held in RWW v EKW (supra), should not be impeded without basis. See also Samvir Trustee Limited v Guardian Bank Limited [2007] eKLR.
8. In this application, other than displaying uncertified or unsubstantiated photographs, there is nothing to show the nature and the particulars of the investments which the applicant has made in the suit land, which risk destruction.
9. The court has also not come across evidence of any pending appeal by way of a filed notice of appeal for the applicant to say that the appeal will be defeated or rendered nugatory.
10. The upshot is that I find the application lacking merit. It is dismissed with costs.
11. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 13TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant – Dennis

Teti for the 1st defendants/respondents present

Mugo for the plaintiff/applicant present

2nd and 3rd defendants absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

