



**Nyanumba v Nyaanga; Nyaanga (Counter Claimer); Nyanumba & 2 others (Defendant to the Counterclaim) (Environment and Land Case 176 of 2014) [2025] KEELC 7073 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7073 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND CASE 176 OF 2014  
M SILA, J  
OCTOBER 15, 2025**

**BETWEEN**

**PHILIP MACHUKI NYANUMBA ..... PLAINTIFF**

**AND**

**JOHN NYAANGA ..... DEFENDANT**

**AND**

**JOHN NYAANGA ..... COUNTER CLAIMER**

**AND**

**PHILIP MACHUKI NYANUMBA .... DEFENDANT TO THE COUNTERCLAIM**

**LAND REGISTRAR, KISII COUNTY .... DEFENDANT TO THE COUNTERCLAIM**

**ATTORNEY GENERAL ..... DEFENDANT TO THE COUNTERCLAIM**

**RULING**

**(On application for stay pending appeal)**

1. The application before me is that dated 15 July 2025 filed by the unsuccessful plaintiff. The application seeks orders of stay of execution pending hearing of an appeal that he intends to prefer to the Court of Appeal. The application is opposed.
2. To put matters into perspective, the applicant commenced this suit vide a plaint filed on 7 May 2024. The applicant contended to be the rightful owner of the land parcel Kisii Municipality/Block I/492 (the suit property). His reason for filing suit was that the respondent had trespassed into the land on 24 April 2014 and attempted to stop him from developing it. The respondent filed defence and



counterclaim wherein he asserted that it was him (respondent) who was the rightful proprietor of the suit property. In his counterclaim, he sued the applicant and the Land Registrar, Kisii, seeking orders to nullify the title held by the applicant. I heard the case and in my judgment delivered on 1 July 2025, I upheld the title of the respondent and nullified the title of the applicant. It was my holding that the purported title of the applicant had been procured fraudulently and that the rightful proprietor of the suit land was the respondent. I made various orders including the order that the the applicant do demolish the structures that he had developed on the suit property and in default the respondent was at liberty to proceed and demolish the same or take over the suit property in the state that it was. What the applicant had developed on the suit property was a block of flats. It is also worth mentioning that the applicant had charged the property to Barclays Bank Limited and I also ordered the cancellation of this charge.

3. Aggrieved, the applicant filed a notice of appeal and has followed that up with this application for stay of execution pending appeal.
4. In his supporting affidavit, the applicant has averred that the respondent is keen to execute the judgment and if he does so then his appeal will be rendered nugatory and an academic exercise. He also avers that he is bound to suffer substantial loss if the judgment is executed. He states that he is ready to provide security that the court may deem just, reasonable, and expedient.
5. The respondent has filed a replying affidavit to oppose the motion. He avers that this is an old case that was filed in 2014 and that he had been in possession when the case was filed before being dispossessed by the applicant. He contends that the applicant sought numerous adjournments which delayed the matter and gravely prejudiced hm. He contends that granting a stay will be tantamount to further suspending his rights to enjoy the suit property. He avers that he has already lost 12 years of benefit from the suit property. He does not think that the applicant has any arguable appeal and is of opinion that the applicant is out to abuse the court process to unjustly enrich himself after participating in fraudulently creating title in his name. He urges that the court should not allow the applicant to continue benefiting from his fraudulent conduct. He further deposes that issuing stay orders will mean that the bank will continue holding the security for monies advanced to the applicant and there is risk of the chargee exercising her statutory power of sale. Regarding the development on the suit property, he deposes that he has chosen the option of taking over the suit property as it is, and that in the unlikely event that the applicant succeeds on appeal, he will willingly surrender the suit property to him in a good state of repair. He is amenable to the court appointing a real estate agent to manage the suit property and having the rental income thereof deposited in court pending hearing of the appeal. He has averred further that if the applicant insists on being granted stay, then he should deposit the sum of Kshs. 13 million, the amount that he borrowed, and the rental income until the appeal is determined.
6. The applicant filed a supplementary affidavit. He deposes that the length of time taken in hearing the case is not a bar to the orders that he seeks. He states that he is the one in possession having developed the suit property. He thinks that the depositions of the respondent are absurd.
7. I invited counsel to file written submissions in arguing the application and I have taken note of the submissions filed by Mr. Ochwangi, learned counsel for the applicant, and Mr. Omayio, learned counsel for the respondent.
8. What is before me is an application for stay pending appeal and I stand guided by Order 42 Rule 6 (2) which provides as follows :
  - (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.
9. The above law informs the court not to make an order of stay of execution unless the court is satisfied of three things, being :
  - i. That the applicant stands to suffer substantial loss.
  - ii. That the application has been made without unreasonable delay.
  - iii. That there is provided such security for the due performance of the decree in the event that the applicant loses the appeal.
10. I will start with delay for I am persuaded that the applicant came to court timeously. The judgment was delivered on 1 July 2025 and the applicant filed his application on 9 July 2025 which was prompt.
11. The second issue is substantial loss. On this I am not persuaded. Given the undertaking by the respondent that he will not demolish the structures, and he is ready and willing to hand over the same in their current state in the event that the applicant succeeds, I do not see any substantial loss that the applicant stands to suffer, save only for the loss of rental income. Yet again, on the rental income, the respondent has stated that he is amenable to the property being managed by an Estate Agent and the rental income being deposited in court, which would mean that in the event that the applicant succeeds on appeal, he will receive the monies deposited as rental income. The applicant has not said in his affidavits exactly what substantive loss he stands to suffer if these options are put in place pending hearing and determination of the appeal.
12. Apart from the foregoing, the respondent has a point in urging that if stay is granted in the manner sought by the applicant, then the suit property remains at risk of being sold by the chargee. The applicant has not responded to this issue, has not said how much he owes the bank, or what arrangements he has put in place to pay any outstanding amounts thereof. If I do not allow the execution of the order regarding change of title to the respondent then the chargee may proceed to sell the property in exercise of her statutory power of sale as the charge will remain registered. That may in fact make the entire subject matter of the case to vanish to the detriment of the successful respondent.
13. Taking all the above into account, it is my view that the following orders suffice :
  1. That the respondent is at liberty to execute the part of the judgment that concerns rectification of title in his name and nullification of the title of the applicant. Upon change of title the respondent not to deal with the title until the appeal is heard. If the applicant succeeds on appeal, the nullification of title can be reversed.
  2. That the suit property will be in possession of the respondent for the duration of the appeal but the respondent not to demolish any structures therein.
  3. That the tenants in the premises be deemed as tenants of the respondent and the rental income derived therein will be deemed the income of the respondent and the respondent will be the one liable to pay tax on rental income from the same.
  4. That the suit property be managed by a reputable firm of Estate Agents to be agreed upon by the applicant and respondent within the next seven (7) days and in default of agreement, the Deputy Registrar to appoint one in his discretion within 7 days thereafter.



5. That the Estate Agent appointed to ensure that the suit property is properly maintained, kept in good repair, and is tenanted.
  6. That the Estate Agent appointed to deposit the rent received in a joint interest earning account to be opened by counsel for the applicant and respondent within the next 14 days and if no account is opened within this period then the monies be deposited in court less the management fees, tax on rental income, and maintenance expenses.
  7. That the Estate Agent will deposit into the account of the respondent, the amount of monthly tax on rental income for the respondent to pay the same to the Kenya Revenue Authority as prescribed by the law on rental income.
  8. That the Estate Agent to furnish the court , through the Deputy Registrar, with a monthly account and also give an update of the status of the suit property.
  9. That if the applicant succeeds on appeal, the monies deposited be released to him but if the applicant fails on appeal, the monies deposited be released to the respondent.
14. The last issue is costs. The costs of this application will be costs in the appeal.
15. Orders accordingly.

**DATED AND DELIVERED THIS 15 DAY OF OCTOBER 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Ochwangi for the applicant

Mr. Omayio for the respondent

Court Assistant – Michael Oyuko

