



**Ochieng v Agricultural Development Corporation & 3 others (Environment and Land Petition 2 of 2022) [2025] KEELC 6798 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6798 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND PETITION 2 OF 2022  
CK NZILI, J  
OCTOBER 8, 2025**

**BETWEEN**

**STEPHEN OCHIENG ..... PETITIONER**

**AND**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK,  
FISHERIES & CO-OPERATIVE SOCIETIES ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before the court is an application dated 26/5/2025. The judgment debtor seeks a stay of execution of the judgment and consequential orders, pending hearing and determination of the intended appeal. The grounds are set out on the face of the application and in a supporting affidavit of Stephen Ochieng, sworn on 26/5/2025.
2. The applicant deposes that the effect of the judgment that dismissed his petition was followed by an order that the 3<sup>rd</sup> respondent cancel entries No. 6, 7, and 8, in the title L.R. No. 2053 (I.R. 19981), after the court also declared the suit land to be public property, to be held by the 1<sup>st</sup> respondent on behalf of the public.
3. Should the orders issued by the court be effected, the applicant deposes that he will be prejudiced, unlike the respondents, who are in occupation of the land.
4. The applicant deposes that he has filed a notice of appeal and that his appeal raises serious grounds with high chances of success. The applicant states that he has applied for stay orders without delay, noting that the judgment was uploaded to the case tracking system on 23/4/2025.



5. The applicant deposes that a casual reading of the judgment shows glaring errors made by the trial court, after considering irrelevant facts, calling for rectification by the appellant court. The applicant has attached copies of the judgment, notice of appeal, and draft memorandum of appeal, and letters seeking proceedings as annexures marked SO-(1), (2), (3), and 4(a) and (b) respectively.
6. The applicant deposes that entries contained in the certificate of title should be maintained until the matter is heard and determined by the Court of Appeal; otherwise, a copy of the title is already deposited with the court and should be preserved as the parties await the disposal of the appeal.
7. The applicant deposes that he is ready and willing to prosecute the appeal; otherwise, the cancellation of the entries will mean that the title reverts to the 1<sup>st</sup> respondent, which will render the appeal nugatory.
8. The application is opposed by a replying affidavit sworn on 16/6/2025 by Edward Ojode. It is deposed that the applicant is being dishonest because the court uploaded the judgment promptly. The 1<sup>st</sup> respondent contends that the application does not meet the conditions set under Order 42 Rule (6) and (7) of the Civil Procedure Rules, with a demonstration on how he stands to suffer substantial loss, more so when the process of execution, which in any event is a lawful process, was yet to be put in motion.
9. The 1<sup>st</sup> respondent deposes that the applicant has not demonstrated how the 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, whose merits or demerits are beyond the purview of this application.
10. The 1<sup>st</sup> respondent deposes that in the event the court is inclined to grant the orders sought, the petitioner/applicant should be compelled to deposit Kshs. 4,000,000/= as security, being half the amount he alleged to have used to acquire the land, the subject of this matter, to be allowed to prosecute his appeal; otherwise, the application should be dismissed.
11. When this matter came under certificate of urgency on 29/6/2025, parties were directed to file and exchange replying and further affidavits together with written submissions before 16/7/2025. Come 16/7/2025, the applicant did not appear to prosecute the application. Learned counsel for the 1<sup>st</sup> respondent, Miss Auta Advocate, told the court that her client had filed both a replying affidavit and written submissions. Miss Chilaka, learned state counsel appearing for the 2<sup>nd</sup> - 4<sup>th</sup> respondents, told the court that she had not been served with the application.
12. Though the court was asked by the respondents to dismiss the application for non-attendance, it declined to do so, given the replying affidavit and written submissions.
13. The 1<sup>st</sup> respondent submits that the court has no jurisdiction to determine the merits or demerits of the intended appeal as indicated in paragraphs 4 and 6 of the supporting affidavit to the notice of motion. Reliance is placed on Peter Samoei -vs- Isaac K. Ruto [2012] eKLR. The 1<sup>st</sup> respondent submits that the applicant has not demonstrated that he stands to suffer substantial loss if the 1<sup>st</sup> respondent is allowed to exercise the decree. Reliance is placed on Halsbury's Law of England Vol. 17 par 14, that the legal burden lies with the applicant to substantiate substantial loss.
14. Equally, the 1<sup>st</sup> respondent relies on Muchina T/A Muchina & Co. Advocates -vs- E.A. Standard No. 2 [2002] KLR 63 as quoted in Njenga -vs- Njeri & Others, Civil Appeal E125 of 2023 [2023] KEHC 23991 [KLR] (24<sup>th</sup> October 2024) (Ruling).
15. The issue calling for my determination is whether the application meets the ingredients of a stay of execution, pending hearing and determination of an intended appeal. A party seeking a stay of



execution has to file the application without inordinate delay, demonstrate substantial loss, and lastly offer security for the due realization of the decree should the appeal not succeed.

16. The law has not defined what the maximum or minimum delay is. It all depends on the circumstances of each case. The judgment sought to be stayed was delivered on 23/4/2025. The notice of appeal was lodged dated 25/4/2025, while this application was filed on 26/5/2025. The applicant has not explained the delay of over one month, yet the order sought to be stayed was to take effect immediately.
17. The power to grant a stay of execution is discretionary, to be exercised judicially and on sound principles. See *Butt -vs- Rent Restriction Tribunal* [1979] eKLR. The purpose is to preserve the subject matter in dispute, while balancing the interests of the parties and considering the circumstances of each case. In *RWW --vs EKW* [2019] eKLR, the court reiterated that the two rights of the judgment debtor and judgment creditor have to be balanced, so that no party suffers prejudice that cannot be compensated by an award of costs.
18. Substantial loss refers to what has to be prevented by preserving the status quo because such a loss would render the appeal nugatory. In *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* [2012] eKLR, the court said that an applicant has to establish other factors, other than alleging execution is imminent, which 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.
19. The court notes that the applicant's petition was dismissed. A negative order may not and is not capable of being stayed. An order of stay is an ordinary interim order that seeks to delay the performance of a positive obligation set out in the decree. The delay of performance presupposes the existence of a situation to stay, a positive order, which has not been complied with or has partly been complied with. See *Kenya Commercial Bank Limited -vs- Tamarind Meadows Limited & 7 others* [2016] eKLR.
20. The applicant has not attached any such decree that is due for execution. Evidence that the respondents have extracted any and are in the process of executing it is lacking. A copy of the official search certificate showing the status of the title register as at the judgment date has not been attached to show that if the entries are reversed, there would be irreparable loss or damage.
21. In any event, it is the duty of the applicant to satisfy the court that the entries, if reversed, would be permanent in nature, given that, if he were to succeed on appeal, the Court of Appeal can still effect reversals to the entries. Evidence that the respondent is likely to dispose of the public property is lacking.
22. The applicant has admitted that the suit property is currently occupied by the 1<sup>st</sup> respondent. Substantial loss cannot be simply assumed. Tangible and cogent evidence has to be produced to show how the substratum of the appeal would dissipate in the absence of a stay order in the circumstances obtaining. See *Kanwal Sarjit Singh Dhiman -vs- Keshavji Jivraj Shah* [2008] eKLR.
23. As to security, it is upon the applicant to offer the same. It is not enough to say that there is a copy held by the court, yet the judgment was explicit that the same be forthwith surrendered to the 1<sup>st</sup> respondent. Equally, costs for the suit have not been offered to be deposited before the court. In *Gianfranco Manenti & another -vs- Amaco Assurance Company Ltd* [2014] eKLR, the court held that an applicant must show and meet the condition of payment of security for due performance of the decree; otherwise, the winner is entitled to the fruits of his litigation.
24. Looking at the application, I am of the considered view that in order to preserve the substratum of the appeal, an inhibition order should be registered against the title register to last for one (1) year from the date hereof.



25. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT  
KITALE ON THIS 8<sup>TH</sup> DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

Miss Auta for the 1<sup>st</sup> respondent present

2<sup>nd</sup> - 4<sup>th</sup> respondents absent

Obino for Akello for IP present

Mr. Havi for the petitioner/applicant present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

