



REPUBLIC OF KENYA



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Abdulrahman v Mungai & 4 others (Environment and Land Case 117 of 2018) [2025] KEELC 5727 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5727 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 117 OF 2018
MD MWANGI, J
JULY 31, 2025
(FORMERLY ELC CASE NO. 378 OF 2016 NAIROBI)

BETWEEN

ABDULRAHMAN ALI ABDULRAHMAN PLAINTIFF

AND

ROLAH WANJIRU MUNGAI 1ST DEFENDANT

THE LAND REGISTRAR, KAJIADO 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

PANAI TULITO 5TH DEFENDANT

(In respect of the Notice of Motion application dated 8th November 2024 pursuant to Order 42 Rule 6 of the Civil Procedure Rules)

RULING

Background

1. Before this Court for determination is a Notice of Motion application dated 8th November 2024, brought under the provisions of Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Rules](#), and Sections 1A, 1B and 3A of the [Civil Procedure Act](#), among other enabling provisions. The application is filed by the 5th Defendant/Applicant seeking, *inter alia*, the following orders:
 - a. That this Honourable Court be pleased to grant a temporary stay of proceedings and execution of the judgment, decree, and all consequential orders delivered on 28th October 2024, pending the hearing and determination of this application.



- b. That this Honourable Court be pleased to grant a stay of proceedings and execution of the judgment, decree, and all consequential orders delivered on 28th October 2024, pending the hearing and determination of the intended appeal.
 - c. That further proceedings in this matter be halted pending the hearing and determination of the intended appeal filed at the Court of Appeal at Nairobi.
 - d. That costs of this application be provided for.
2. The applicant prays for interim reliefs to forestall any prejudicial execution proceedings against him arising from the said judgment. It is supported by the Supporting Affidavit sworn by the 5th Defendant/Applicant, Panai Tulito, who deposes that he is dissatisfied with the judgment of this Honourable Court which allowed the Plaintiff's claim in full and, in consequence, exposed him to the risk of cancellation of his registered title to the suit property.
 3. The Applicant avers that immediately upon delivery of the judgment, he instructed his advocates on record to file a Notice of Appeal, which was duly filed on 29th October 2024. Further, he deposes that a request for certified typed proceedings was made on 31st October 2024, and the appeal process has already commenced with a view to challenging the judgment before the Court of Appeal at Nairobi. The Applicant annexed to his affidavit various documents evidencing steps taken towards the appeal, including the notice of appeal, the receipt for payment of filing fees, a letter requesting proceedings, and email correspondence between his advocates and the Court of Appeal registry.
 4. The 5th Defendant/Applicant contends that unless a stay of execution and proceedings is granted, the Plaintiff/Respondent may move to execute the decree, thereby rendering the appeal nugatory and causing him irreparable harm. He further states that the application has been brought timeously and without delay, and that the intended appeal raises arguable grounds with a high probability of success.
 5. In urging the Court to exercise its discretion in favour of the stay orders sought, the Applicant invokes the overriding objective of the Court under Sections 1A and 1B of the *Civil Procedure Act*, and the inherent powers under Section 3A, to prevent an abuse of the process and ensure substantive justice. He also asserts that no prejudice shall be occasioned to the Plaintiff/Respondent if the orders sought are granted, whereas he stands to suffer substantial loss.
 6. The Plaintiff/Respondent, through his advocate, Mr. Yusuf Idarus, filed a replying affidavit in opposition to two applications—one by the 1st Defendant dated 14th November 2024 and the instant application by the 5th Defendant dated 8th November 2024.
 7. With regard to the 5th Defendant's application for stay of execution, the Plaintiff argues that no substantial loss has been demonstrated. It is also noted that execution has not commenced, making the application premature.
 8. The Plaintiff adds that the 5th Defendant has not furnished security for costs, and that this failure should weigh against the application. He further contends that the intended appeal has no merit.

Directions

9. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the submissions and the same have been considered in the writing of this ruling.



Issues for determination

10. The sole issue for determination is whether the application has met the threshold for the grant of the orders sought.

Analysis and Determination

11. The 5th Defendant/Applicant seeks an order for stay of execution of the judgment delivered on 28th October 2024 pending appeal. The applicable law is Order 42 Rule 6[2] of the *Civil Procedure Rules*, which provides that:

“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.”

12. The judgment in question was delivered on 28th October 2024, and the application for stay was filed on 8th November 2024, only eleven days later. This Court is satisfied that the application was made timeously and with reasonable dispatch. This position aligns with the decision in *Kenyatta National Hospital v John Kamau Gitbaiga & Another* [2020] eKLR, where the court held that:

“Applications for stay should be made promptly. Where delay is explained and minimal, the court may still consider the merits of the application.”

Thus, the first limb under Order 42 Rule 6[2] is satisfied.

13. The core ground upon which the application must be assessed is substantial loss. The Applicant asserts that they are aggrieved by the judgment and fear that the Plaintiff may move to execute the decree, which could expose them to loss including cancellation of the title to the subject land. However, the Applicant has not particularized what that loss entails or how such loss amounts to substantial loss incapable of compensation.

14. The jurisprudence is clear that substantial loss must be specific, real, and demonstrable—not speculative. In *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] eKLR, Platt, JA, stated that:

“It is not sufficient to merely state that substantial loss will result. The applicant must demonstrate that he will suffer substantial loss.”

15. Further, in *Machira t/a Machira & Co. Advocates v East African Standard* [No 2] [2002] KLR 63, the court held that:

“In seeking to determine whether substantial loss will be occasioned to the applicant...the court is entitled to consider the facts and circumstances of the case and not to accept vague and unfounded allegations.”

16. In this case, the Applicant has merely stated that they are dissatisfied and “gravely aggrieved,” and that he fears that the judgment may be executed to his detriment. However, this does not meet the evidentiary burden of proving that substantial loss would occur. Mere dissatisfaction with a judgment or the possibility of execution is not enough; after all it is a lawful judgement.



17. Moreover, the fear of cancellation of title, while serious, is not shown to be incapable of reversal or compensation if the appeal succeeds. In *Co-operative Bank of Kenya Ltd v Banking Insurance & Finance Union* [2015] eKLR, the Court emphasized that:

“Substantial loss does not represent any loss. It represents loss that is substantial in terms of amount, severity, or impact, and which cannot be made good by an award of damages.”

18. Accordingly, the Court finds that the Applicant has not demonstrated substantial loss as required by law.

19. The final condition is the offer or provision of security. This requirement is not a mere formality. It is a statutory safeguard under Order 42 Rule 6[2][b], meant to balance the rights of the decree-holder with those of the judgement-creditor. In *Equity Bank Ltd v Taiga Adams Company Ltd* [2006] eKLR, the Court emphasized that:

“The provision for security for due performance of the decree is to ensure that the successful party will not be prejudiced by the stay.”

20. In the present case, the Applicant neither offers nor proposes any form of security. The supporting affidavit is silent on this aspect, and the written submissions made no persuasive argument on this requirement. In *Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR, the Court of Appeal emphasized that:

“The Applicant must show that they are willing to put up security for the due performance of the decree should the appeal not succeed. Failure to do so is fatal.”

21. This omission is not a technicality; without security, the court is unable to safeguard the Respondent’s interests, thereby tipping the balance of justice unfairly.

22. Since substantial loss has not been demonstrated and security has not been offered, the application cannot succeed even if an arguable appeal exists.

23. The Court acknowledges that the right to appeal is a constitutional right envisaged under Article 50[1] and Article 48 of the *Constitution*. However, a right of appeal does not automatically entitle a party to stay of execution. The rules governing such relief are procedural safeguards that preserve the interests of both parties and must be complied with.

24. Accordingly, the Notice of Motion application dated 8th November 2024 by the 5th Defendant/Applicant seeking stay of execution of the judgment delivered on 28th October 2024 pending appeal is hereby dismissed. The costs of the application shall abide the outcome of the appeal.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Omondi for the 5th Defendant/Applicant

Ms. Wagemu h/b for Mr. Ali for the Plaintiff/Respondent

N/A by the 1st-4th Defendants



Court Assistant: Edwin

