



**Block v Kenya Forest Service; Chief Land Registrar & 3 others (Interested Parties) (Environment and Land Petition 1396 of 2014) [2025] KEELC 5649 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5649 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND PETITION 1396 OF 2014  
JG KEMEI, J  
JULY 31, 2025  
FORMERLY CONSTITUTIONAL PETITION NO. 481 OF  
2014**

**BETWEEN**

**JEREMY MARK BLOCK ..... PETITIONER**

**AND**

**KENYA FOREST SERVICE ..... RESPONDENT**

**AND**

**CHIEF LAND REGISTRAR ..... INTERESTED PARTY**

**THE HON. ATTORNEY GENERAL ..... INTERESTED PARTY**

**DENNIS AWORI ..... INTERESTED PARTY**

**THE DIRECTOR OF SURVEYS ..... INTERESTED PARTY**

**RULING**

(In respect Respondent's application dated 6/9/2024)

1. The Application for determination before this Court is the Applicants/ Respondent's Motion of 6/9/2024 expressed to be brought under the provisions of Section 1A,1B,3 and 3A of the [Civil Procedure Act](#) and Order 42 Rule 6 of the [Civil Procedure Rules](#). Principally, the Applicant prays for Orders that: -
  - a. Pending the hearing and determination of the appeal from the judgment herein, the Honourable Court be pleased to grant a stay of execution of the Judgment and decree made on the 29/2/2024 together with all the consequential declarations, orders and decrees made thereunder.



- b. Costs be provided for.
2. The application is premised on the grounds on the face of it and reiterated in the Supporting Affidavit of A.L. Lemarkoko, EBS, NDC (K) sworn on 6/9/2024. The Applicant avers that this court vide its Judgment delivered on 29/2/2024 held that the Petitioner's land, LR No. 214/432 extends beyond its natural boundary with the Karura Forest. That being aggrieved by the said Judgment, the Applicant herein has preferred an appeal therefrom on the basis that the trial court did not inter alia consider the legal effect of Gazettement of the Karura Forest area as provided in Proclamation 44 of 1932 and the original survey map for the area being F/R No. 23/1.
  3. The deponent states that in effect, the Petitioner now occupies part of the Karura Forest on the basis that his boundary extends beyond his land over the natural boundary being River Getathuru. That the disputed portion of land is now not accessible to the Applicant as well as the public who have a right to visit and use public amenities and facilities such as forests.
  4. The deponent argues that the impugned Judgment has emboldened other persons who intend to use administrative and judicial maneuvers to alienate and grab public land for personal use at the detriment of the greater public. He states that people may start fencing off parts of Karura Forest and purport that the boundaries to their land extend beyond the natural boundary of the said river.
  5. The deponent therefore argues that unless a stay order is granted and the court applies the precautionary principle of adjudication of environmental matters, the said Karura Forest and parts thereof, stand to be lost and erode the gains made in protecting forests in the country. He asserts that the Applicant as well as the wider public shall suffer irreparable loss and damages that will defeat the substratum of the intended Appeal. He argues that the Petitioner will not be prejudiced and that the application has been filed without any delay.

### **The Petitioner's and 3<sup>rd</sup> Interested Party's Replying Affidavit**

6. The Petitioner and the 3<sup>rd</sup> Interested Party opposed the application vide the Replying Affidavit of Jeremy Mark Block sworn on 5/11/2024. The Petitioner and 3<sup>rd</sup> Interested Party avers that the application is misconceived and a non-starter for, among other reasons, seeking to stay what are effectively negative orders. He asserts that the Honourable Court merely confirmed his already existing property rights over the Suit Property but no additional rights or benefits were conferred upon him.
7. The Petitioner contends that the application has been made after an inordinate period of time. Further that the Applicant has also failed to meet the other mandatory conditions for grant of stay of execution as stipulated in law. He avers that the Applicant's officers were seen patrolling the boundary between the Suit Property and Karura Forest carrying maps and taking photographs without his permission. The Applicant's agents further deposited several cut trees and trimmings onto the Suit Property and upon inquiry, he was informed that they were conducting a forest maintenance exercise. He contends that the several acts of trespass and intimidation made him to write to the Applicant demanding that it complies with the Judgment of the court, which letter has not been responded to up to date.
8. He asserts that he is living in reasonable fear and apprehension as the Respondent continues to wantonly trespass onto the Property despite the Judgment in this matter to his great prejudice. He argues that the Applicant has come to court with unclean hands. He urges the court to dismiss the application with costs to the Respondent.
9. The Court directed that the application be canvassed by way of written submissions. Parties complied. The Respondent/ Applicant's submissions are dated 6/11/2024, the 1st Interested Party's submissions



are dated 24/2/2025 whereas the Petitioner's and the 3rd Interested Party's submissions are dated 31/6/2025. The Court has had the opportunity to read through and consider the said submissions.

### **Analysis and Determination**

10. The Court has read and considered the Application, the Affidavits and the annexures thereto as well as the rival submissions, I am of the view that the issues for determination are as follows;
- a. Whether the prayer for stay of execution pending hearing and determination of the Appeal is merited.
  - b. Who should bear the costs of the application.

### **Whether the prayer for stay of execution pending hearing and determination of the Appeal is merited**

11. It is trite that no Appeal can operate as stay hence an application for stay shall be made to court by the desiring parties. The principles upon which stay of execution pending appeal may be allowed are now well settled from the authorities of this court and from the superior courts. Generally, stay of execution is provided for under Order 42 Rule 6 of the [Civil Procedure Rules](#) which provide as follows: -
1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, an application being made, to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  2. No order of 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 undue 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. Stay of execution pending appeal is a discretionary power bestowed upon this court by the law. The Court of Appeal in the case of [Butt v Rent Restrictions Tribunal](#) [1982] KLR 417 gave guidance on how a court should exercise the said discretion and held that: -
- a. The power of the court to grant or refuse an application for a stay of execution is discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
  - b. The general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge's discretion.
  - c. A Judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
  - d. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.



- e. The court in exercising its powers under Order XLI Rule 4 (2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order of stay of execution to lapse.”
13. As such for an applicant to move the court into exercising the said discretion in his favour, the applicant must satisfy the court that substantial loss may result to him or her unless the stay is granted, that the application has been made without undue delay and that the applicant has given security or is ready to give security for the due performance of the decree.
  14. On whether the application is timely and/ or brought without undue delay, the impugned Judgment was delivered on 29/2/2024 and the instant application was filed on 9/9/2024. That is about six months after the Judgment. The applicant filed a Notice of Appeal on 2/4/2024 but did not file any application for stay. As noted above, an Appeal can never operate as stay. What amounts to inordinate delay differs from case to case.
  15. In the case of Utalii Transport Company Limited & 3 Others v NIC Bank Limited & Another [2014] eKLR, the Court in considering what amounted to inordinate delay stated that;
 

“Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable”
  16. In Jaber Mohsen Ali & Another v Priscillah Boit & Another [2014] eKLR where the four days’ delay in filing of an application for stay pending an Appeal was considered as inordinate. The court held that a delay even for a day is delay.
  17. The Applicant has not advanced any reason for the said delay. In its submissions, the Applicant argues that unreasonable delay is a matter of discretion and that there is no cap on time limitation. It contends that in view of the fact that this is a matter of great public importance, it is in the interest of justice that the orders sought be granted.
  18. The Court of Appeal in Nakuru Civil Appeal No. 1/2007; - William K. Too v Simion K. Langat [2007] eKLR, refused to interfere with the ruling of the High Court, where the learned judge found that an unexplained delay of forty-two days was inordinate. Even if this Court was to invoke the provisions of Article 159(2) (d), of the Constitution, such disregard on the rules of procedure cannot be ignored. The provision is not a panacea for the abuse of court process. Land is an emotive issue in Kenya and litigating parties ought to judicially and expeditiously adjudicate on them. In my view, the delay in bringing the application was inordinate and has not been adequately explained.
  19. On the second limb of substantial loss, in James Wangalwa & Another v Agnes Naliaka Cheseto (2012) eKLR, the court found that substantial loss is what has to be prevented by preserving the status quo because such loss would render an appeal nugatory. It is therefore not enough to suggest that the Applicant will suffer loss.
  20. In the case of Kenya Shell Limited v Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) KAR 107 the Court of Appeal pronounced itself to the effect that: -
 

“It is usually a good rule to see if Order 41 Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare



case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdiction for granting stay”

21. The Applicant has a burden to show the substantial loss she is likely to suffer if no stay is ordered. This is in recognition that both parties have rights, the appellant to its appeal, which includes the prospects that the appeal will not be rendered nugatory, and the decree holders to the decree which includes the full benefits of the decree. The court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination. (See the case of *Absalom Dora v Turbo Transporters* (2013) eKLR)
22. In this case, the applicant has stated that if the impugned decree is not stayed, the Petitioner is likely to fence off the disputed area at the detriment of the Applicant and the greater public. It contends that the suit property is used by the public for recreation activities such as sports. That fencing off the area is likely to lock out the public, which loss cannot be compensated.
23. In response the Petitioner states that the applicant has never been in possession of the suit land; no new fence has been erected and the applicant has trespassed on to the suit land despite the judgment of the court barring it from doing so.
24. I find that the applicant has not demonstrated substantial loss that it will suffer if the orders sought are not granted.
25. The third condition required of an Applicant seeking an order of stay of execution is to provide such security as the Court orders for the due performance of such decree or order as may ultimately be binding upon an Applicant. The Applicant submits that the claim herein is a boundary dispute. There is no possibility of loss of land. Further, that the Applicant is a public institution that cannot be wound up hence the undertaking that it will not interfere with the suit property is sufficient security.
26. The essence of provision of security was aptly enunciated in the case of *Arun C. Sharma v Ashana Rainkundalia t/a Rairundalia & Co. Advocates & 2 Others* [2014] eKLR, where the court stated: -

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor.... Civil process is quite different because in civil process the Judgment is like a debt hence the applicants become and are Judgment Debtors in relation to the Respondent. That is why any security given under Order 42 Rule 6 of the *Civil Procedure Rules* acts as security for due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.”
27. As already demonstrated in *James Wangalwa & Another v Agnes Naliaka Cheseto* (*supra*) the three (3) conditions for granting stay of execution pending appeal must be met simultaneously. They are conjunctive.
28. Having found that the Applicant has not adequately demonstrated the substantial loss that is likely to be suffered, it has failed to prove that this application was brought without undue delay. The Applicant has also failed to furnish or offer security for the performance of the decree, in the event it was unsuccessful in the Appeal.
29. Grant of stay of execution is at the discretion of the Court having considered the circumstances of the application and the applicable law, it is my finding that the Applicant has not met the requisite principles for grant of Stay Order and as such the application is unmerited.



30. Final orders for disposal

- a. The Notice of Motion dated 6/9/2024 is not merited.
- b. It is therefore dismissed with costs to the Petitioner.

31. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. Mr Muchiri for the Petitioner
2. N/A for the Respondent
3. N/A for the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Interested Parties
4. Mr Muchiri for the 3<sup>rd</sup> Interested Party
5. CA- Ms Yvette Njoroge

