



**Kimani v Creek Ventures Limited; Registrar of Land, Ngong & 2 others (Interested Parties)
(Environment and Land Case 144 of 2018) [2025] KEELC 5746 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5746 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 144 OF 2018
MD MWANGI, J
JULY 31, 2025**

BETWEEN

SUSAN WANJIKU KIMANI PLAINTIFF

AND

THE CREEK VENTURES LIMITED DEFENDANT

AND

THE REGISTRAR OF LAND, NGONG INTERESTED PARTY

DISTRICT SURVEYOR, KAJIADO COUNTY INTERESTED PARTY

THE ATTORNEY GENERAL INTERESTED PARTY

*(In respect of the Notice of Motion application dated 22nd April
2025 pursuant to Order 42 rule 6 of the Civil Procedure Rules)*

RULING

Background

1. The Plaintiff/Applicant, Susan Wanjiku Kimani, has moved this Court by way of a Notice of Motion dated 22nd April 2025 seeking, inter alia, the following orders that this Honourable Court be pleased to issue an order staying execution of the judgment dated 30th January 2025 against the Appellants/Applicants pending the hearing and determination of the appeal.

She further prays that this Honourable Court be pleased to issue an order preserving the suit properties, namely Kajiado/Olchoro Onyore 22494 (the Appellant/Applicants' portion) and Kajiado/Olchoro Onyore 22305 (the Defendant/Respondents' portion), pending the hearing and determination of the intended appeal.



2. The application is premised on the provisions of Sections 1A, 1B, 3, and 3A of the *Civil Procedure Act*, Order 42 Rule 6, and Order 51 Rule 1 of the Civil Procedure Rules, 2010, among other enabling provisions of the law. It is supported by the affidavit sworn by the Applicant, who avers that she has already filed a Notice of Appeal dated 19th March 2025 with an intention of lodging an appeal before the court of appeal and further requested typed proceedings in preparation for lodging the appeal. She contends that the intended appeal raises arguable issues with a reasonable probability of success.
3. According to the Applicant, unless an order of stay is granted, the Respondent will proceed to execute the judgment, including dealing with the property known as Kajiado/Olchoro Onyore/22305, to her detriment. She deposes that the Respondent is a real estate developer, and in the absence of stay orders, the property could be sold to unsuspecting third parties, thereby rendering the appeal nugatory. The Applicant further undertakes to comply with any conditions on security that the Court may impose to safeguard the judgment and decree appealed from.
4. The Applicant contends that the immediate intervention of the Court is necessary to forestall the risk of execution and protect the substratum of the appeal.
5. The application is opposed through a replying affidavit sworn by Benson Wairagu, a director of the Defendant company. He avers that the stay orders sought are untenable, contending that the Appellant misled the Court into granting interim reliefs on 25th April 2025. While conceding that the Appellant has a right to appeal, the Respondent insists that such right should not prejudice its proprietary rights over its land.
6. The Respondent's case is that the land parcel at the centre of the intended appeal, Kajiado/Olchoro Onyore 22305, no longer exists, having been lawfully subdivided on 29th January 2015 into forty-eight distinct titles, namely Kajiado/Olchoro Onyore 22150-23191, for which titles were duly issued to the Defendant. A certified copy of the mutation is exhibited as 'BW2'. The Respondent further maintains that the Appellant never demonstrated that any of these resultant parcels were fraudulently created or overlapped with her parcel of land known as Kajiado/Olchoro Onyore 22494.
7. It is further contended that the Appellant's own title, Kajiado/Olchoro Onyore 22494, is non-existent on the ground and absent from all relevant Registry Index Maps, constituting what it terms as, an "air title". The Court, as presided over by Hon. Justice M. N. Gicheru, previously found the said title to be fraudulent. On this basis, the Respondent argues that there is nothing left for the Court to preserve or stay, as the properties forming the subject of the intended appeal are non-existent.
8. The Respondent additionally disputes the Appellant's claim that the appeal seeks to cure encroachment of various parcels, asserting that the memorandum of appeal instead challenges the Defendant's ownership of the entire Kajiado/Olchoro Onyore 22305, which ceased to exist in 2015. The Defendant denies any encroachment upon the Appellant's alleged properties and asserts that the application is merely intended to frustrate its use of the lawfully acquired subdivisions, against which it continues to service loans.
9. Lastly, the Respondent contends that any claim of encroachment could have been administratively addressed by the Land Registrar, and that granting a stay in respect of non-existent parcels would amount to the Court issuing orders in vain. The application is therefore characterized as an abuse of process, and the Respondent prays for its dismissal with costs.



Directions

10. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the submissions of both parties, and which I have considered in the writing of this ruling.

Analysis and Determination

11. I have carefully considered the Notice of Motion dated 22nd April 2025, the supporting affidavit of Susan Wanjiku Kimani, the replying affidavit sworn by Benson Wairagu on behalf of the Respondent, the rival submissions of counsel, and the applicable law. The Applicant seeks, inter alia, orders of stay of execution of the judgment delivered on 19th March 2025 and preservation of the suit properties pending determination of an intended appeal.
12. The guiding principles for the grant of stay of execution pending appeal are well settled under Order 42 Rule 6(2) of the Civil Procedure Rules, namely: ‘that the Applicant must demonstrate, sufficient cause, that substantial loss may result unless the order is made, that the application was filed without unreasonable delay; and that security for the due performance of the decree is provided’. These principles must be applied alongside the overriding objective in sections 1A and 1B of the [Civil Procedure Act](#) to facilitate just, proportionate, and expeditious resolution of disputes, as well as the constitutional command under Article 159(2)(d) to administer justice without undue regard to procedural technicalities.
13. On the first limb, the Applicant has demonstrated that she lodged a Notice of Appeal dated 19th March 2025, applied for typed proceedings, and annexed a draft memorandum of appeal that raises arguable points of law, including questions of ownership and alleged encroachment of portions of land described as Kajiado/Olchoro Onyore 22305 and 22494. Whether the appeal will ultimately succeed is not for this Court to determine at this stage; it suffices that the intended appeal is not frivolous.
14. On substantial loss, the Applicant avers that unless stay is granted, the Respondent, a real estate developer, may dispose of the disputed parcels, thereby rendering the appeal nugatory and exposing innocent third parties to adverse consequences. The Respondent, on the other hand, maintains that parcel number Kajiado/Olchoro Onyore 22305 ceased to exist upon subdivision into 48 titles, while Kajiado/Olchoro Onyore 22494 is a fraudulent “air title” not reflected in the Registry Index Map. It is further deposed that the application is intended to deprive the Respondent of the use of its lawfully acquired properties and that there is, in any event, nothing to stay.
15. Having weighed these competing positions, I find that there is still a live controversy regarding the alleged encroachment and ownership of subdivisions arising from the impugned parcels. If the Respondent were to transact with third parties during the pendency of the appeal, the substratum of the dispute could be altered irreversibly, rendering the appeal nugatory and defeating the interests of justice. On the other hand, an unrestricted stay would unduly prejudice the Respondent, who has demonstrated that the original parcels cited in the judgment no longer exist in their original form.
16. In the circumstances, I am persuaded that the balance of convenience tilts in favour of preserving the status quo pending determination of the intended appeal. This Court is mindful that its orders should not be issued in vain, and any stay must be narrowly tailored to safeguard the subject matter of the appeal without unnecessarily fettering the Respondent’s proprietary rights. The Applicant has also undertaken to comply with any order as to the provision of security should the court so order.
17. Accordingly, I make the following orders:



- a. Pending the hearing and determination of the intended appeal, there shall be a limited stay of execution of the judgment delivered on 19th March 2025, strictly to the extent of preserving the current status of any subdivisions arising from parcels Kajiado/Olchoro Onyore 22305 and Kajiado/Olchoro Onyore 22494 that remain in dispute.
- b. The Applicant shall, within thirty (30) days of this ruling, deposit in in an interest earning account in the joint names of the Advocates for the parties herein security for the due performance of the decree in the sum of Kshs.500,000/=, failing which the stay orders shall lapse automatically.
- c. The above order shall not bar the Respondent from dealing with subdivisions not forming the subject of the intended appeal, provided that no further subdivisions, transfers, or encumbrances shall be registered against the disputed portions pending the hearing of the appeal.
- d. The costs of this application shall abide the outcome of the intended appeal.

It is so ordered.

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

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Jelgat h/b for Mr. Ngugi for the Applicant

Mr. Njoroge h/b for Mr. Kariuki for the Defendant

N/A by the Interested Parties

Court Assistant: Edwin

