



**Ali v Khasoa & another (Environment and Land Appeal  
E008 of 2025) [2025] KEELC 7289 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7289 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL E008 OF 2025  
A NYUKURI, J  
OCTOBER 16, 2025**

**BETWEEN**

**REUBEN YIDAH ALI ..... APPELLANT**

**AND**

**BEATRICE KHASOA ..... 1<sup>ST</sup> RESPONDENT**

**MARY ADHIAMBO OLUNE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. Before court is a notice of motion dated 20<sup>th</sup> March 2025 filed by the appellant seeking orders of stay of execution of the judgment and decree issued on 14<sup>th</sup> January 2025 as well as stay of execution of the orders of 11<sup>th</sup> March 2025, both issued in Butali CMC ELC Case No. 117 of 2018, pending the hearing and determination of this appeal. He also sought costs.
2. The application is anchored on the affidavit sworn by the applicant dated 20<sup>th</sup> March 2025. His case was that he was directly affected by the decision in Butali CMC ELC Case No. 117 of 2018 and that he faces the imminent risk of execution of the said judgment, hence the same should be stayed in the interests of justice. That his application for stay of the judgment before the trial court was declined vide the court's ruling of 11<sup>th</sup> March 2025. That he has appealed against the lower court judgment which appeal has high chances of success. That his counsel has informed him that if stay is not granted the respondent will be at liberty to execute the judgment and that therefore the purpose of the appeal will be defeated and the same shall be rendered nugatory. He added that the respondents will not be prejudiced if orders sought are granted and that he was ready to avail security.
3. The application was opposed. The respondents filed grounds of opposition dated 8<sup>th</sup> May 2025. They stated that the application was frivolous, vexatious and scandalous and had no basis in law. That the application was only meant to delay a successful litigant from realizing fruits of her judgment. That



the applicant had not demonstrated the prejudice he would suffer if orders sought were declined. That should the court be inclined in granting the orders sought, then the same should be on condition that security should be deposited in regard to costs within 14 days. They maintained that as the application lacked merit and ought to be dismissed with costs.

4. The application was disposed by way of written submissions. On record are submissions filed by the applicant dated 19<sup>th</sup> May 2025, which this court has duly considered.

#### **Analysis and determination.**

5. The court has carefully considered the application, the respondents' grounds of opposition and the applicant's submissions. The single issue that arise for the court's determination is whether the applicant has met the threshold for grant of orders of stay of execution pending appeal.
6. Order 42 Rule 6 of the Civil Procedure Rules provides for the jurisdiction of the court to grant orders of stay of execution pending appeal, as follows;

“Stay in case of appeal [Order 42, rule 6]

- (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, on 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 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.”
7. Therefore, to succeed in an application for stay of execution pending appeal, the applicant ought to demonstrate that they stand to suffer substantial loss if stay is not granted; that they have approached court without unreasonable delay and also demonstrate willingness to provide security for the due performance of the decree that may issue against them. Imminent execution cannot in itself be a basis for grant of orders of stay of execution pending appeal, as execution is a lawful process that follows grant of an order, judgment or decree by a court.
8. In the case of James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR, where the court expressed itself thus:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is



the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that 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 ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo Because such loss would render the appeal nugatory.”

9. In the instant matter, the applicant stated that if execution proceeds the appeal will be defeated and hence rendered nugatory. Further that if orders of stay of execution are not granted, the respondent will be at liberty to execute the judgment. It is clear from the above allegations that the applicant apart from stating that his appeal will be rendered nugatory and be defeated, did not substantiate the manner in which the same will be rendered nugatory. He failed to show the nature of substantial loss he was likely to suffer if the orders sought are not granted. Mere allegations of substantial loss without proof of the same do not meet the threshold set out in Order 42 Rule 6 of the Civil Procedure Rules.
10. Ultimately, I find no merit in the application dated 20<sup>th</sup> March 2025, which I hereby dismiss with costs to the respondent.
11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Gaylord for the appellant

No appearance for the respondent

Court Assistant- Delphine

