



REPUBLIC OF KENYA



KENYA LAW
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**Nderitu v Muruga & another (Environment and Land Appeal
6 of 2020) [2025] KEELC 5659 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5659 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 6 OF 2020**

**JO OLOLA, J
JULY 31, 2025**

BETWEEN

IBRAHIM KINGORI NDERITU APPELLANT

AND

ELISHIBA NYAKIRANGI MURUGA 1ST RESPONDENT

THE LAND CONTROL BOARD - OTHAYA 2ND RESPONDENT

RULING

1. By the Notice of Motion dated 12th February 2024, Ibrahim Kingori Nderitu (the Appellant) prays for the following:
 1. Spent;
 2. That the Honourable Court be pleased to order that there be no dealings in relation to land parcel Mahiga/ Kihome/273 pending the hearing and determination of this Application as well as pending the hearing and determination of the Appeal herein and /or until further orders of this Honourable Court;
 3. That the Honourable Court be pleased to call for and have placed in custody of this Honourable Court, the title deed to Mahiga/Kihome/273 pending the hearing and determination of the Appeal herein and /or until further orders of this Honourable Court;
 4. Spent;
 5. That the Honourable Court be pleased to grant the Appellant/Applicant an order for stay of execution of the Judgment delivered on the 24th January, 2020 and all consequential orders thereto pending the hearing and determination of the Appeal herein and /or until further orders of this Honourable Court; and



6. That the costs of this application be provided for.
2. The application is supported by an Affidavit sworn by the Appellant and is premised on the grounds inter alia, that:
 - i. The Appellant was dissatisfied with the judgement delivered in the Othaya SRM ELC Case No. 6 of 2019 on 24th January, 2020 and has lodged an Appeal against the same;
 - ii. The Respondent is highly likely to dispose off the property to third parties who may not be aware of this suit and it is important that the title to the suit property be kept in the custody of the court;
 - iii. Unless the application herein is allowed it will be rendered nugatory and so will the Appeal;
 - iv. The application will not occasion any prejudice to the Respondent if allowed; and
 - v. It is mete and just that the Appellant's prayers be granted pending the hearing and determination of the Appeal.
3. Elishiba Nyakirangi Muruga (the 1st Respondent) is opposed to the orders sought. By the Grounds of Opposition dated 2nd April, 2024, the 1st Respondent states:
 1. That the Application dated 12.02.2024 is misconceived, vexatious and an abuse of the Court process;
 2. That the Application dated 12.02.2024 has been brought too late in the day, the same having been filed more than 4 years from the date of the Judgment complained about. The Applicant is guilty of laches;
 3. That the Applicant has come to this Court with unclean hands as the Application is based on a lie;
 4. The Application is merely meant to embarrass the 1st Respondent and the Court as the Judgment issued in the Subordinate Court is incapable of being stayed; and
 5. The Application dated 12.02.2024 should therefore be dismissed with costs to the 1st Respondent.
4. In addition to the said Grounds of Opposition, the 1st Respondent has filed a Replying Affidavit also sworn on 2nd April, 2024 wherein she reiterates the matters raised in her Grounds of Opposition. It is the 1st Respondent's case that she has been in occupation of the suit land and hence the Appellant cannot be evicted therefrom.
5. I have carefully perused and considered the Applicant's application as well as the response thereto by the 1st Respondent. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the parties.
6. Order 42 Rule 6(2) of the Civil Procedure Rules, 2010 provides as follows:
 - "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. As was stated in the case of RWW –vs- EKW (2019) eKLR:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

8. In the matter herein, the Appellant had by a Plaint dated 19th February, 2019 sought for a declaration that the 1st Respondent had procured the title deed for the parcel of land known as Mahiga/Kihome/273 unlawfully and illegally. In addition, the Appellant had urged the court to direct the 1st Respondent to execute all necessary documents to effect the transfer of the said parcel of land to himself as the rightful proprietor thereof.

9. Having heard the dispute and in the judgment delivered on 24th February, 2020, the Honourable D.M. Ireri SRM concluded and determined as follows:

“In the end and in view of all what I have said herein, it is my finding that the Plaintiff has failed to prove his case against the defendants to the required standard. Consequently, the Plaintiff’s suit be and is hereby dismissed. Each party to bear (their) own costs of the suit.”

10. Having failed to get the declaration and orders that he had sought in the Lower Court, it was difficult to comprehend what the Appellant herein was urging this court to stay. As the Court of Appeal explained in Co-operative Bank of Kenya Limited –vs- Banking Insurance & Finance Union (Kenya) (2015) eKLR:

“An order for stay of execution (pending appeal) is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a Judgment. The delay of performance presupposes the existence of a situation to stay – called a “positive order” – either an order that has not been complied with or has partly been complied with. See, for this general proposition, the holding of the Court of Appeal of Uganda in Mugenyi & Co. Advocates -vs- National Insurance Corporation (Civil Appeal No. 13 of 1984) where it was stated: ‘..... an order for stay of execution must be intended to serve a purpose’”

11. Arising from the decision of the Trial Court there is no doubt that the order whose execution the Appellant seeks to stay herein was a negative order. The said order did not require the parties to do or refrain from doing anything. It merely dismissed the Appellant’s Case.

12. It follows that the Appellant’s application was totally misconceived. Indeed, while the Civil Procedure Rules required such an application to be made without unreasonable delay, this particular one arrived in court some four (4) years after the decision sought to be stayed had been made. Thus from the very outset, it was destined for dismissal.

13. Accordingly, I hereby dismiss the Motion dated 12th February 2024 with costs to the 1st Respondent.



**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT
MOMBASA THIS 31ST DAY OF JULY, 2025**

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Appellant/Applicant
- c. Ms. Macharia holding for brief for Muchiri Advocate for the 1st Respondent
- d. No appearance for the 2nd Respondent

