



**Kinuthia & 3 others v Gichanga (Environment and Land Appeal E008 of 2025)
[2025] KEELC 7378 (KLR) (Environment and Land) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7378 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E008 OF 2025
MC OUNDO, J
OCTOBER 30, 2025**

BETWEEN

**PETER NDUNG’U GEORGE KINUTHIA 1ST APPELLANT
WAIREGI NDUNGÚ 2ND APPELLANT
REUBEN WAWERU KARANJA 3RD APPELLANT
JANE NJOKI WAKIBI 4TH APPELLANT**

AND

SAMUEL MBURU GICHANGA RESPONDENT

RULING

1. Vide a Notice of Motion Application dated 26th May 2025 brought under the provisions of Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of law, the Appellants have sought for an order of stay of execution in Naivasha ELC No. 21 of 2018; Samuel Mburu Gichanga -vs- Peter Ndun’gu, Gerge Kinuthia & 4 Others, pending the hearing and determination of their Appeal. They also sought that the costs of the Application be in cause.
2. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Jane Njoki Wakibi, the 5th Appellant herein who deponed that the Chief Magistrate Court at Naivasha (Hon. N S Lutta, Chief Magistrate) had rendered its Judgement in Naivasha ELC No. 21 of 2018; Samuel Mburu Gichanga -vs- Peter Ndung’u, George Kinuthia & 4 Others on 30th April 2025 where Judgement had been entered against she and her co-appellants thereby directing that they be evicted from parcel of land No. Maela Ndabibi Block 3 69 (NG’ATI) despite there having been no proof of the alleged trespass.



3. That being aggrieved by the said judgement, they had lodged the present Appeal. That they were genuinely apprehensive that the Respondent would proceed to have them evicted from the Suit Property in execution of the Judgement and Decree of the Lower Court.
4. That their Appeal has high chances of success hence they were apprehensive that they may suffer irreparable loss wherein their Appeal may be rendered nugatory, unless an order for stay of execution was granted.
5. That they were willing to tender such security as the Honourable Court would order for the due performance of the Decree that may ultimately be binding upon them. Lastly that the instant Application had been brought without undue delay and no prejudice would be suffered by the Respondent were the same allowed.
6. In response and in opposition to the Application, the Respondent filed his Grounds of Opposition dated 24th June, 2025 on the grounds that the case had been going on for 12 years and the annexed intended appeal has no chance of success and secondly, that the Application was misconceived and devoid of any merit whatsoever and therefore should be dismissed in its entirety with costs.
7. In his Replying Affidavit also dated the 24th June, 2025 the Respondent deponed that he had proved the ownership of the suit land through production of the original title deed to land parcel No Maela Ndabibi Block 3 69 (Ng'ati) to which he had not consented to its sub-division hence proving that the title had been fraudulently subdivided without his knowledge at a time when he had been bedridden and admitted in hospital.
8. That in any event, the Applicants' intended appeal had no chances of success because the Lower Court had full jurisdiction to determine the matter. That the application was merely intended to delay the conclusion of the instant long outstanding matter.
9. Directions were taken for the disposal of the Application dated 26th May, 2025 by way of written submissions which I shall proceed to summarize as herein under.

Appellants Submissions.

10. The Appellants Applicants vide their submissions dated 16th July, 2025 summarized the factual background of the matter and then placed reliance on the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules to submit that an Applicant must satisfy the Court that:
 - i. substantial loss may result to him unless the order is made;
 - ii. that the Application has been made without unreasonable delay; and
 - iii. the Applicant has given such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him.
11. That indeed, the 5th Appellant had attached a copy of the Respondent's Complaint as annexure PGNK2 to her Affidavit where prayer (b) had sought their eviction from the subject property. That it was a common ground that the Respondent's suit before the Lower court had been allowed as prayed, thereby precipitating the present Appeal. That the logical consequence of the Judgment of the Lower Court had been that the Appellants stood to be evicted from the suit land unless this Honourable Court stayed implementation of the said Judgment pending the hearing of the present Appeal.
12. It was their submission that given that they resided on the suit land, it was probable that their eviction therefrom during the pendency of the instant appeal would occasion them substantial loss. Reliance



was placed in the decided case of Thika ELCA No E 43 of 2023; Stanley Mburu Karanja (suing as a Personal Representative of the Estate of John Karanja Mathaga) –vs– Serah Wanjiku Gichuhi.

13. They submitted that their application had been made without unreasonable delay, for judgment having been rendered on 30th April, 2025, they had filed their Appeal alongside the instant Application on 26th May, 2025 pursuant to the provisions of Section 79G of the *akn ke act 1924 3 Civil Procedure Act*.
14. Lastly on the issue of security for the due performance of such decree or order as may ultimately be binding on them, they submitted that they were ready to provide such security, as the Court would deem just in the circumstances, for the due performance of such Decree or Order as may ultimately be binding on them.
15. In conclusion, they submitted that they had demonstrated that substantial loss may result to them were the orders sought not granted and urged the court to allow their Application.

Respondent's Submissions

16. Vide the Written Submissions dated 11th July, 2025, the Respondent framed his issues for determination as follows:
 - i. Do the Applicants have any prove or an agreement stating or proving which parcel of land they had bought.
 - ii. Does the Respondent have the original title deed that had been subdivided into the land that they had bought?
 - iii. Does the Respondent know who had registered the title they intend to have bought from the respondent? (sic)
 - iv. Who should be condemned to meet the costs of the instant claim?
17. The Respondents submissions had been that he had bought the parcel of land and obtained a title deed on the 16th October 2014, did a search on 24th October 2014 which had been followed by a valuation report on 30th December 2014 wherein he had paid a sum of Kshs. 8000 =.
18. That the Applicants had failed to provide the court with any agreement drawn between him and themselves as proof that he had sold to them any portion of land parcel No. Maela Ndabibi Block 3 69 (Ng'ati) and neither had they provided any original documents of how their land had been registered at the land's registry.
19. That the applicants' Appellants' appeal was intended to delay their eviction from the suit land. That in any case, the instant suit having been filed 7 years ago, in 2018, the Appellants had enough time to prove their ownership which they failed.
20. In conclusion, he requested the Court to dismiss the instant Application with costs. That he was aging and sickly and was afraid that the Appellants were using delay tactics to deny him an opportunity to enjoy peace in his parcel of land.
21. He placed reliance on the decided case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR to submit that the Applicants had not demonstrated how they stood to suffer irreparably in the event that he executed decree of the court or if the orders sought herein were not granted. That instead, they had merely alleged that he was keen on enforcing the impugned orders which would render the appeal nugatory.



22. That it was trite law that execution of a court decree was a lawful process and was not a ground for granting stay of execution hence the Applicants were required to show how the intended execution would irreparably affect them thus rendering the appeal nugatory. He submitted that the Applicants had not demonstrated the substantial loss they stood to suffer in the event that the orders sought herein were not granted.

Determination.

23. Having considered the application before the court herein, the opposition thereto, the submissions by both parties, the authorities cited and the applicable law, the Applicants bring their application seeking an order from the court to stop the execution of a judgment delivered by the Chief Magistrate Court at Naivasha on 30th April 2025 which ordered them to be evicted from the land parcel Maela Ndabibi Block 3 69 (NG'ATI), even though, they claim, there was no proof of trespass. That they were aggrieved by this judgment and have lodged the current Appeal. That they are genuinely apprehensive that the Respondent will proceed to evict them in execution of the lower court's decree if stay is not granted.
24. They believe their Appeal has high chances of success and they fear they will suffer irreparable loss, and their Appeal will be rendered nugatory if the eviction proceeds before the Appeal is heard. That their application was filed timelessly, they are willing to tender security for the due performance of the decree that may ultimately be binding upon them and the Respondent will suffer no prejudice if the stay is granted.
25. In opposition to the Application, the Respondent's position, through his Grounds of Opposition and a Replying Affidavit, was that the application for a stay of execution should be dismissed with costs. For reason that the case had been ongoing for 12 years, wherein it ought to come to a finality so that he could enjoy the fruits of his judgement. That the intended appeal had no chance of success as he had proved ownership of the suit land, Maela Ndabibi Block 3 69 (Ng'ati), by producing the original title deed.
26. That the Application was characterized as misconceived and devoid of any merit whatsoever and the Appellants had no case. That the eviction order was valid whereby the application for a stay was simply an abuse of the court process intended to prolong the matter.
27. The law concerning stay of execution pending Appeal is found in Order 42 Rule 6 of the Civil Procedure Rules which stipulates 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 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 orders set aside. Prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.



2. 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.”

28. Subsequently, I find two issues arising for determination, namely:

- i. Whether the Applicants have satisfactorily discharged the conditions warranting the grant of stay of execution of decree pending Appeal.
- ii. What orders should this Court make.

29. What amounts to a substantial loss was clearly explained by the Court of Appeal in *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] KECA 94 (KLR) held as follows: -

“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 corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money.”

30. On the first condition of proving that substantial loss may result unless stay order is made, it was incumbent upon the Applicants to demonstrate the kind of substantial loss they would suffer were the stay order not granted. I have gained sight of the Applicants Appellants draft Memorandum of Appeal and find that they have an arguable appeal. I am further satisfied that they will suffer substantial loss if the decree is executed against them wherein they would be evicted from the suit premises thereby rendering their appeal nugatory were the application not allowed.

31. As to whether the instant Application has been brought without undue delay, it is not contested that judgment was entered on 30th April, 2025, wherein the application and Memorandum of Appeal were filed on the 26th May 2025. I find that the appeal and the present application for stay of execution has been filed without undue delay.

32. On the last condition as to provision of security, I find that Order 42 Rule 6 (2)(b) of the Civil Procedure Rules stipulate in mandatory terms that the third condition that a party needs to fulfil so as to be granted the stay order pending Appeal is that (s)he or they in this case, must furnish security to guarantee the due performance of such decree or order as may ultimately be binding on them. It is not to punish the judgment debtor. The Applicants herein have pledged their readiness to furnish the court with such security for the due performance of the Decree that may ultimately be binding upon them.

33. Since the grant of stay orders is discretionary wherein the court is expected to balance out the interests of the successful litigant and the Applicants’ unfettered right to file an appeal to fully ventilate their grievances, I shall allow the Applicant’s Application dated the 26th May 2025 on the following terms;

- i. Stay of the execution of the Judgement Decree in *Naivasha ELC No. 21 of 2018; Samuel Mburu Gichanga -vs- Peter Ndun’gu, George Kinuthia & 4 Others* is herein granted pending hearing and determination of the Applicant’s intended Appeal.



- ii. The Appellants Applicants do deposit a sum of Kshs. 500,000 = in court as security for due performance of the decree herein within 45 days from the date of the Ruling.
- iii. The Appellants Applicants to compile, file and serve a record of appeal upon the Respondent within 45 days from the date hereof.
- iv. In the event of default of any of the aforementioned conditions, the stay hereby granted shall lapse and the Respondent shall be at liberty to execute without further reference to the court.
- v. The costs of this application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 30TH DAY OF OCTOBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND COURT – JUDGE

