



**Katuga v Omuga & 5 others (Environment and Land Miscellaneous Application
E054 of 2023) [2025] KEELC 7217 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E054 OF 2023
YM ANGIMA, J
OCTOBER 23, 2025**

BETWEEN

LEONARD MUGUSA KATUGA APPELLANT

AND

BONIFACE ODIRA OMUGA 1ST RESPONDENT

IRENE MWIHAKI NDUNG’U ALIAS LILY UMAZI KADZO 2ND RESPONDENT

LAND REGISTRAR MOMBASA 3RD RESPONDENT

IRENE MWIHAKI NDUNG’U 4TH RESPONDENT

ASHEEY JUMA MBARAK 5TH RESPONDENT

GLADYS MUENI SEVU 6TH RESPONDENT

RULING

1. By a notice of motion 12.03.2024 expressed to be brought pursuant to Article 159 (2) (d) of *the Constitution* of Kenya, Sections 1A, 1B, 2, 3, 3A, 44 and 80 of the *Civil Procedure Act* (Cap. 21) Order 1 Rule 9 of the Civil Procedure Rules and all other enabling provisions of the law, the appellant sought an order of injunction against the execution of a judgement issued on 23.03.2023 in Mombasa CMCC ELC No. 45 of 2018 consolidated with Mombasa CMCC ELC No. 136 of 2020 pending the hearing and determination of the Appeal in ELC Appeal No. E027 of 2023.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the appellant, Leo M. Katuga, on 12.03.2024. The applicant pleaded that the 6th respondent was attempting to execute the decree despite the applicant having two separate pending appeals. It was contended that the execution would cause the applicant to suffer irreparable loss and severe prejudice that cannot be compensated by an award of damages. It was further contended that the application was made without due delay and in good faith and should be granted as prayed.



3. Following the directions issued pursuant to the ruling dated 19.06.2024, the respondents were directed by the court to file and serve their responses to the application within 14 days from the date of the ruling. The court further directed the appellant to file and serve submissions within 14 days upon service of the responses. In addition, the respondents were to file and serve their submission within 14 days upon the lapse of the appellant's period. There is no indication on record of the respondents having filed any responses to the application.
4. The court has perused the appellant's notice of motion dated 12.03.2024 and the material on record and is of the view that the key issue is whether or not the appellant has made out a case for the grant of a stay pending appeal.
5. Order 42 Rule 6 of the Civil Procedure Rules provides for a stay of execution in the following terms:
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 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.
6. The factors to be considered in an application for a stay of execution pending appeal were summarized in the case of *Halai & Another v Thornton & Turpin (1963) Ltd* [1990] KLR 365 as follows;

“Thus, the superior court's discretion is fettered by three conditions. Firstly the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable delay.”
7. The court is of the view that the appellant has not demonstrated any evidence of substantial loss despite claiming to suffer irreparable damages and severe prejudice if execution of the decree takes place. Moreover, the court has noted that the instant application was filed on 12.03.2024 which is approximately one year after the impugned judgment was delivered on 23.03.2023. The appellant has not given any credible or satisfactory reason that would justify the unreasonable delay.
8. The upshot of the foregoing is that the court finds and holds that the appellant has failed to satisfy the requirements set out in Order 42 Rule 6 of the Rules. As a consequence, the applicant's notice of motion dated 12.03.2024 is hereby dismissed with no order as to costs.

THE RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 23RD DAY OF OCTOBER 2025.

.....
Y. M. ANGIMA



JUDGE

In the presence of:

Gillian - Court assistant

N/A for the appellant

N/A for the respondents

