



**Lwangu v Ndote & 23 others (Environment and Land Case  
79 of 2010) [2025] KEELC 7170 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7170 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 79 OF 2010**

**CK NZILI, J**

**OCTOBER 22, 2025**

**BETWEEN**

**SOFIE FEIS LWANGU ..... PLAINTIFF**

**AND**

**BENSON WAFULA NDOTE & 23 OTHERS ..... DEFENDANT**

**RULING**

1. Through an application dated 4/7/2025, the applicant seeks a stay of execution of the judgment or decree of this court, delivered on 15/3/2025, pending hearing and determination of the appeal, including the taxation of costs thereof. The reasons are on the face of the application and in a supporting affidavit sworn by Sophie Feis Lwangu, sworn on 25/6/2025.
2. The grounds as they appear on the face are that if the application is not allowed, the intended appeal will be rendered nugatory; she will suffer substantial loss as she has permanent fixtures on the suit property likely to be wasted away or destroyed; through continued fragmentation, partitioning and selling of the suit land; the respondents will not suffer any prejudice, since they are in possession of the disputed portions of the property, a stay would ensure the preservation of the status quo, she is willing to furnish security, the application has been filed timeously and lastly, it is only fair and just to grant the orders sought.
3. The application is opposed through a replying affidavit of Benson Wafula Ndote, the 1<sup>st</sup> defendant, on behalf of his own behalf and the 2<sup>nd</sup> defendant. It is deposed that the application was filed 4 months after the judgment, while there is no properly filed appeal within the stipulated 60 days, under the Court of Appeal Rules, hence there is no pending appeal, as the alleged notice of appeal has died a natural death.
4. The respondents depose that the applicant has not demonstrated what prejudice she will suffer if the application is not allowed, and what substantial loss she will suffer.



5. The respondents depose that there is nothing to show how the intended appeal will be rendered nugatory. As to the merits of the intended appeal, the respondents depose that it is not for this court to assess whether the same is arguable or has high chances of success.
6. The respondents depose that the attached memorandum of appeal will not see the light of day, as it seeks prayers that the applicant had not prayed for in her plaint.
7. When this application was certified for hearing on 18/9/2025, parties were directed to put in written submissions before the interpartes hearing. Learned counsel for the applicant sought leave, which was granted to put in a supplementary affidavit and written submissions. No supplementary affidavit was filed by 25/9/2025.
8. The respondents, on their part, filed written submissions as directed within 14 days. The same are dated 26/9/2025. It is submitted that the filing of a notice of appeal is not an automatic right for an applicant to obtain orders of stay. In this case, it is submitted that the notice of appeal alleged was not endorsed by the Deputy Registrar. It does not bear the date that it was issued, and there is no evidence that the memorandum of appeal was filed within 60 days. Further, it is submitted that the applicant has not demonstrated the leave for an extension of time to lodge the memorandum of appeal out of time.
9. In the absence of the foregoing, the respondents submit that the court would be granting a stay based on no pending appeal. Reliance is placed on Patrick Kibunja Kithithi -vs- Victor Magira Marete Nyeri Civil Appeal (Appl. No. 48 of 2014) and Lillian Jelimo -vs- Enock Pipkoech Kemboi & Another Kitale ELC No. 78 of 2008.
10. The respondents submit that the application does not meet the threshold under Order 42 Rule 6(1) of the Civil Procedure Rules in that it was filed more than three months after the judgment was delivered; there is no explanation for the inordinate delay, and the current application was only prompted by the filing of the bill of costs.
11. Further, the respondents submit that there is no evidence on how the appeal shall be rendered nugatory or on how the applicant shall suffer substantial loss in the absence of any stay orders. The respondents submit that the land shall always be there, and if any changes occur to the title, the same can be reversed if the appeal were to succeed.
12. The respondents submit that the judgment of the court was clear that the applicant does not live on the suit land and that she never produced evidence of the alleged extensive or substantial developments on the suit land. It is submitted that the applicant has not offered any security for the due realization of the decree should the appeal not succeed. The respondents submit that the applicant has not demonstrated any sufficient cause why they should be denied enjoyment of the fruits of their judgment. Reliance is placed on Jackson Ngachulot -vs- Mudangi Sondang Kitale ELC No. 26 of 2023.
13. Stay of execution pending appeal is fettered by four conditions, namely, establishment of a sufficient cause, substantiation of substantial loss, furnishing of security, and the filing of the application without unreasonable delay. See Vishram Ravji Halai -vs- Thornton & Turpin [1990] KLR 365.
14. In Samvir Trustee Ltd -vs- Guardian Bank Ltd, Nairobi Milimani HCC No. 797 of 1997, the court said that a party aggrieved by the decision has an unfettered right to appeal, and a court should not put unnecessary hindrance to that right if the applicant for stay has demonstrated special circumstances which can sway its discretion in a particular manner. The court held that the court should balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time seeing to it that a successful party is not impeded from enjoying its fruits of judgment that has defined



its rights with a definite conclusion. The court said that the burden is the availability of adequate and proper evidence of substantial loss.

15. Substantial loss is the cornerstone of stay, as held in *Kenya Shell Ltd -vs- Kibiru* [1986] KLR 410. It is what is in to be prevented from happening.
16. Without evidence, it is difficult for the court to see why the respondents should be kept away from the fruits of their judgment. In *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* [2012] eKLR, the court said that execution per se does not amount to substantial loss, and a party must show other factors which will negate or interfere with the substratum of the appeal to the detriment of the applicant if he were to succeed in the appeal.
17. It is not enough to allege substantial loss without empirical and documentary evidence. The legal duty, as held in *National Industrial Credit Bank Limited -vs- Aguias Francis Wasike* Civil Appl. No. 238 of 2005, is on the applicant to prove the allegations that the appeal shall be rendered nugatory. An applicant has to move the court within a reasonable time. The applicant must also offer security as a show of good faith. It is not for the court to suggest the type of security to offer.
18. In this application, the respondents submit that there is no pending appeal; otherwise, at the time of applying, almost four months after the judgment was delivered, the applicant should have attached both a duly filed notice of appeal and a memorandum of appeal.
19. The court is asked to rely on *Patrick Kibunja Kithinji -vs- Victor Mugira Marete* (supra), and find that the notice of appeal and the alleged memorandum of appeal offend Rules 82 and 84 of the Court of Appeal Rules. The applicant has not denied the allegation that there is no pending appeal for non-compliance with the Court of Appeal Rules. The applicant was given a chance to substantiate the existence of a pending appeal. The supplementary affidavit was not filed at all.
20. On the delay in the filing of the application, after or close to four months since delivery of the judgment, the applicant has not offered any explanation for the delay. Though the law has not set what the maximum or minimum delay is, it all depends on the circumstances of each case. See *Henry Bukomoka & Others -vs- Statewide Insurance Co. Ltd*, Uganda Court of Appeal 12 of 1999.
21. The court finds that there was an inordinate delay; otherwise, the applicant was awakened from her slumber by the filing of the bill of costs for taxation. As to substantial loss, other than alleging the same, no material has been placed before the court to assess the nature, particulars, and the value of the alleged extensive developments on the suit property by the applicant, likely to be destroyed or wasted away in the absence of a stay.
22. The court agrees with the respondents that the applicant has not demonstrated what loss she is likely to suffer since she has never lived on or developed anything on the suit premises.
23. As to the appeal being rendered nugatory, again, there is no substantial reason for the same. There is nothing to show that the substratum will irreversibly change and that the effect cannot be reversed or compensated by way of damages, if the applicant were to succeed on appeal.
24. As to security, none has been offered. As held in *Focin Motorcycle Co. Ltd -vs- Ann Wambui Wangui & Another* [2018] eKLR, it is a mark of good faith that the application for stay is not just meant to deny the respondents the fruits of their judgment.
25. The upshot is that the applicant does not meet the tests for a grant of stay of execution. No sufficient cause has been shown why the respondents should be denied enjoyment of the fruits of their judgment. The application dated 4/7/2025 is dismissed with costs.



26. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT  
KITALE ON THIS 22<sup>ND</sup> DAY OF OCTOBER 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Odhiambo for plaintiff present

Munialo for 1<sup>st</sup> and 2<sup>nd</sup> respondents present

Plaintiff present

