



REPUBLIC OF KENYA



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Mandal & another (Suing as the administrators/personal representatives on behalf of the Estate of Rajinder Kumar Mandal - Deceased) v Bakran; Sheth (As the Executor of the Estate of Ved Prakash Mandal) & 3 others (Interested Parties) (Environment and Land Case 172 of 2019) [2025] KEELC 7344 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7344 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT AND LAND CASE 172 OF 2019

SM KIBUNJA, J

OCTOBER 29, 2025

BETWEEN

SHAMMY RAJINDER MANDAL 1ST PLAINTIFF

NIRMALA DEVI RK MANDAL 2ND PLAINTIFF

**SUING AS THE ADMINISTRATORS/PERSONAL REPRESENTATIVES ON
BEHALF OF THE ESTATE OF RAJINDER KUMAR MANDAL - DECEASED**

AND

MOHAMED AHMED BAKRAN DEFENDANT

AND

**HARIT SHETH (AS THE EXECUTOR OF THE ESTATE OF VED PRAKASH
MANDAL) INTERESTED PARTY**

THE ESTATE OF PREM PRAKASH MANDAL INTERESTED PARTY

**SAROJ BALA MANDAL (AS THE EXECUTRIX OF THE ESTATE OF VIJAY
KUMAR MANDAL) INTERESTED PARTY**

ANIL KUMAR MANDAL INTERESTED PARTY

RULING

[Notices Of Motion Dated 14Th July 2025 & 1St September 2025]

1. The plaintiffs have filed two notices of motion dated 14th July 2025 and 1st September 2025, hereinafter referred to as the first and second application respectively. In the first application, the plaintiff seeks for the following orders:



1. “Spent.
 2. Spent.
 3. That pending hearing and determination of the appeal filed herein, the court do grant an order of stay of execution of the decree and judgment delivered by the Honourable Court on 9th July 2025 in Mombasa ELC Civil Case No. 172 of 2019.
 4. That the costs of this application be provided for.”
2. In support of the application, is the affidavit of Shammy Rajinder Mandal, the 1st plaintiff, sworn on 14th July 2025, in which he deposed inter alia that he is a son to the 2nd plaintiff, and one of the administrators of the deceased estate, that held a leasehold interest over the suit property; that the suit property has been their family home since 1971, where he have lived with the his mother, the 2nd plaintiff; that after judgment was delivered against them on 9th July 2025, they filed a notice of appeal on the same day; that before the suit was filed, the defendant had on 20th September 2019 issued them with a demand letter to vacate, that was followed by an auctioneer’s notice of attachment and/or repossession dated 23rd July 2025 demanding Kshs 1,141,000; that his mother is 85 years old, while himself is 64 years, and that eviction at this point would cause emotional and physical hardship to them; that they are ready to furnish security and added that they have been diligently paying the county land rates and annual ground rent; that the application was made without delay.
 3. The application is opposed by the Mohamed Ahmed Bakran, the defendant, through his replying affidavit sworn on 11th September 2025, in which he deposed inter alia that the court in its judgement dismissed the plaintiff’s claim for declaratory and permanent injunction orders, and there is nothing on it that is capable of being stayed; that the plaintiff’s application seems to suggest a prayer for injunction pending appeal, rather than a stay of execution; that the orders sought are equitable reliefs, which must be considered in relation to the special circumstances of this case, and that the conduct of the plaintiffs as observed by the judgment denies them such equitable relief.
 4. In the second application, the plaintiff seeks for the following orders:
 1. “Spent.
 2. Spent.
 3. That the distress for rent action taken by the Defendant dated 28th August 2025 be set aside.
 4. That any or further orders that the honourable court may deem fit to grant be granted.
 5. That the costs of this application be provide for.”
 5. The application is supported by the affidavit of the 1st plaintiff sworn on 1st September 2025, inter alia deposing that after the judgement was delivered on 9th July 2025, they filed a notice of appeal and an application dated 14th July 2025 for stay of execution; that on 28th August 2025 the defendant issued them with a distress for rent through M/s Fantasy Auctioneers for rent arrears totalling Kshs 27,315,000; that they have been paying rent of Kshs 1,500 as per the defendant’s then rent collector’s letter dated 9th September 1986, dutifully; that the defendant is overreaching himself by determining the annual rent at Kshs.45,000, and that the distress for rent cannot occur while the appeal is ongoing.
 6. The learned counsel for the plaintiffs and defendant filed submissions dated 20th September 2025 and 26th September 2025 respectively, which the court has considered.
 7. The following are the issues arising for determinations by the court on the two applications:



1. Whether the plaintiffs have met the threshold for an order of stay of execution of judgment pending hearing and determination of an appeal to issue.
 2. Whether the alleged distress for rent action taken by the Defendant dated 28th August 2025, emanated from the judgement/decree of this court, and what order to issue.
 3. Who bears the costs in the two applications?
8. The court has carefully considered the grounds on the two applications, affidavit evidence, submissions by the learned counsel, superior courts decisions cited and come to the following determinations:
1. Applications for stay of execution pending determination of appeals are guided by Order 42 (6) of the Civil Procedure Rules under Sub Rule 2 requires the applicant to satisfy two conditions, that:
 - i. That substantial loss may result unless the stay of execution order is made, and that the application has been made without unreasonable delay; and
 - ii. Provide such security as the court orders for the due performance of such decree or order as may ultimately be binding.
9. The questions on the merits of the appeal need not influence the trial court in deciding whether or not to grant stay of execution orders as that is the preserve of the appellate court. In the case of *Housing Finance Company of Kenya v Sharok Kher Mohamed Ali Hirji & Another* [2015] eKLR Civil Application No. 74 OF 2015 (UR 63 OF 2015) the court held as follows:
- “These are issues which in our view would best be addressed on merit at the hearing of the intended appeal. We cannot over emphasize that at this stage we are not required to go to the merits of the case as tempting as it may be or consider whether the issues will be successful in favour of the appellant, lest we embarrass the trial judge. We therefore find that the applicant has discharged this requirement on the balance of probabilities. We are further guided by this court’s decision in *Carter & Sons Ltd. V. Deposit Protection Fund Board & Two Others* – Civil Appeal No. 291 of 1997, at Page 4 as follows:
- “... the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . .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, and the application must, of course, be made without unreasonable delay.”
10. The learned counsel for the plaintiff has argued that if the stay of execution order is not granted, the substratum of the appeal would be extinguished, thereby occasioning the plaintiff substantial and irreparable loss. In the case of *Kenya Shell Limited –vs- Benjamin Karuga Kigibu & Ruth Wairimu Karuga* (1982-1988) KAR 1018 the Court of Appeal stated that:
- “It is usually a good rule to see if Order 41 Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both jurisdiction for granting stay.”



11. Further, in the case of Machira T/A Machira & Co Advocates versus East African Standard (No.2) (2002) KLR 63, the Court stated that:

“In this kind of Application for stay, it is not enough for the Applicant to merely state that substantial loss will result. He must prove specific details and particulars.....where no pecuniary or tangible loss is shown to the satisfaction of the Court, the Court will not grant a stay.”

12. The learned counsel for the defendant submitted that the stay sought is for Mombasa/Block X/254A, suit property, and not Mombasa/Block X/254, and the nullification of the former title through the judgement means that there is nothing to stay. He added that no positive orders were issued in the judgement on the Mombasa/Block X/254. In the judgement delivered on 9th July 2025, the court ordered as follows:

- a. Dismissed the plaintiffs’ suit with costs; and
- b. Ordered that the Land Registrar cancel the white card register for Mombasa/Block X/ 254A.
- c. Deputy Registrar to forward a copy of the judgement to the Land Registrar.

13. Having considered the affidavit evidence and submissions presented by both sides, I do not find anything positive in the order dismissing the plaintiffs’ suit that is capable of being stayed, especially considering that the costs are yet to be taxed.

15. I notice that the plaintiffs have in their affidavit in support of the first application deposed inter alia that because of their ages, eviction at this stage would cause emotional and physical hardship as they have been living on the suit property since 1971. In the case of Absalom Dora –v- Turbo Transporters (2013) (eKLR), the court stated as follows about the relief of stay of execution:

“The discretionary relief of stay of execution pending Appeal is designed on the basis that no one would be worse off by virtue of an order of the Court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his Appeal which includes the prospects that the Appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The Court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination.”

16. That it is obvious that the defendant is entitled to enjoy the fruits of judgment, and the plaintiffs have a right to pursue their appeal to its logical conclusion. Had the plaintiffs’ satisfied the court on the conditions precedent to the issuing of the stay order, the court would have opted not to disturb their hitherto reported peaceful environment, as the appeal is heard and determined, but they have not.

17. In respect of the reported distress for rent process initiated by the defendant in August 2025, that the plaintiff has sought through the second application to be set aside, there is nothing to show it emanated from the orders issued in the judgement delivered on 9th July 2025, or the subsequent proceedings. The parties concerned may consider approaching the court in a fresh suit.

18. The plaintiffs having failed in both applications should pay the defendant’s costs in terms of section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya that provides that costs follow the events unless where the court for good cause orders differently.

19. From the foregoing determinations on the two applications, the court finds and orders as follows:



- a. That the plaintiffs' applications dated the 14th July 2025 and 1st September 2025 are without merit.
- b. That the two applications are dismissed with costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 29TH DAY OF OCTOBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiffs : Mr. Gikandi

Defendant : Mr. Nanjala For Wameyo

Interested Parties : No Appearance

Kalekye-court Assistant.

