



REPUBLIC OF KENYA



**Portland Housing Cooperative Society Ltd v Moyonkoi & 10 others;
Matipei (Interested Party) (Environment and Land Miscellaneous Case
E003 of 2023) [2025] KEELC 7198 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7198 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS CASE E003 OF 2023
LC KOMINGOI, J
OCTOBER 16, 2025**

BETWEEN

PORTLAND HOUSING COOPERATIVE SOCIETY LTD PLAINTIFF

AND

**MUNYETI OLE MOYONKOI 1ST DEFENDANT
OCHIENG MIDAMBA 2ND DEFENDANT
DANIEL MUSUNGU 3RD DEFENDANT
OCHIENG ABDALLA 4TH DEFENDANT
JAMES OKEYO MIDAMBA 5TH DEFENDANT
ESTHER NJERI NJUGUNA 6TH DEFENDANT
STEPHEN KUYAN KESHERE 7TH DEFENDANT
MAWARA HOLDING LTD 8TH DEFENDANT
GARUNKA OLE LEKEN (DECEASED 9TH DEFENDANT
NICHOLUS LEPESHUR OLE MUNGAI 10TH DEFENDANT
LAND REGISTRAR KAJIADO 11TH DEFENDANT**

AND

SAUTET JEREMIAH MATIPEI INTERESTED PARTY



RULING

1. This Ruling is in respect to the Notice of Motion dated 19th May 2025 brought pursuant to Order 42 Rule 6 (1) and (2), and Order 51 Rule 1 of the Civil Procedure Rules; Section 3A of the *Civil Procedure Act* and all enabling provisions of the law. It seeks orders that;
 - i. This Honourable Court be pleased to grant an order of stay of execution of the Ruling delivered on 5th May 2025 pending the hearing and determination of the Appeal.
 - ii. The costs of this application be provided for.
2. The grounds are on the face of the application and are set out in paragraphs a to j and supported by the sworn Affidavit of, Kipambi Ntele, Counsel for the Applicants.
3. Counsel averred that after the Ruling delivered on 5th May 2025, they filed a Notice of Appeal dated 6th May 2025 and were awaiting typed proceedings for them to file a Record of Appeal. They therefore sought for stay of execution of the Ruling delivered on 5th May 2025 on the grounds that should it be executed, the Applicants stood to suffer substantial loss of twenty (20) acres of land. He also averred that the Appeal has a high likelihood of success and if stay is not granted, it would be rendered nugatory.
4. The Plaintiff in its Grounds of Opposition dated 6th June 2025 and the Replying Affidavit dated 9th June 2025 contested the Application on grounds that the 1st, 7th Defendants and the Interested Party had made it difficult to implement the Land Registrar's decision from the year 2019 and this Application was another attempt to delay the settlement of the matter. The Plaintiff contested the Applicants' claim that they stood to lose of twenty (20) acres of land deponing that the purpose of the decision was to allocate each party the proper ground location as per their title deeds. It is its case that the Applicants did not Appeal against the decision of the Land Registrar, hence the Court was right in adopting it as an order of the court. They urge that the Application be dismissed with costs.
5. The Interested Party, Sautet Jeremiah Matipei in his Further Affidavit dated 20th June 2025 deponed that they stood to lose their property without having been accorded a fair hearing as enshrined under Article 50 of *the Constitution*, reiterating that they stood to suffer irreparable loss from that decision.
6. The application was canvassed by way of written submissions.

Submissions of the Applicants

7. On whether the Court should grant stay of execution of the Ruling dated 5th May 2025, counsel submitted that as per Order 42 Rule 6 of the Civil Procedure Rules this application had been filed timeously, and if the Ruling is not stayed, then the Applicants stood to suffer loss of property including their homes built on the disputed areas. It was also submitted that some portions of the disputed land had also been subdivided and sold to third parties who could claim for compensation causing substantial damage should the Ruling be implemented. They also submitted that they were willing to pay security should the same be ordered by court. To support the application, reference was made to the following cases: James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR, Butt vs. Rent Restriction Tribunal (1982) KLR and Consolidated Marine vs Nampijja & Another Civil App No. 93 of 1989 (Nairobi).



Submissions of the Plaintiff

8. Counsel submitted on the following grounds to determine whether the stay of execution was warranted.
9. On whether the applicants had established that a prima facie case and whether the application was filed expeditiously, it was submitted that the ruling noted that the decision of the Land Registrar was delivered in the 19th December 2019 in the presence of all the parties and the Applicants were aware that they had 30 days from the date of that decision to appeal or challenge it, but they failed to do so. Therefore, no amount of stay will change this position and even the Appeal being lodged in the Court of Appeal will not alter the legal position that the Registrar decision was to be challenged within 30 days. Counsel also submitted that the issues deponed in the Further Affidavit ought to have been ventilated as objection or at Appeal, an opportunity the Appellants failed to utilise.
10. On whether the Applicants had satisfied Order 42 Rule 6 of the Civil Procedure Rules, counsel submitted that intended appeal did not touch on the merits of the suit and allowing the application would only cause unnecessary delay in enforcement of the decision. Further, it was the Court's duty to balance between the interests of all parties in realising the ends of justice as held in RWW vs. EKW [2019] eKLR. And should the application be allowed, then the Applicants should secure the entire judgement amount citing Arun c. Sharma v. Ashana Raikundalia t/a Raikundalia & Co. Advocates [2014] eKLR.

Analysis and determination

11. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. I find that the issues for determination are:
 - i. Whether the Applicants are entitled to an order of stay of execution of the Ruling delivered on 5th May 2025 pending the hearing and determination of the Appeal.
 - ii. Who should bear costs of the Application?
12. The Applicants seek stay of execution of the Ruling delivered on 5th May 2025 on the grounds that they stand to suffer substantial loss, namely deprivation of 20 acres of land. They further aver that their intended appeal has high chances of success and if stay is not granted, the appeal will be rendered nugatory.
13. The Plaintiff contends the Application on grounds that the Defendants and the Interested Party have persistently frustrated the implementation of the decision of the Land Registrar issued in 2019. It is their case that this application is yet another attempt to delay the final settlement of the matter. According to the Plaintiff, the Applicants' fears of losing 20 acres of land are misplaced, since the decision merely sought to allocate each party their respective parcels as per their title deeds. The Plaintiff further submits that the Applicants never challenged the decision of the Land Registrar within the statutory timelines, hence the court properly adopted it as an order of the court.
14. The overriding provision is Order 42 Rule 6(2) of the Civil Procedure Rules, which provides that;
 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 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.
3. Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.”
15. On whether the application was made without unreasonable delay, the Ruling sought to be stayed was delivered on 5th May 2025 and this application filed on 19th May 2025. The application was therefore filed timeously.
16. On whether the Applicants will suffer substantial loss and if the Appeal will be rendered nugatory if the execution is not stayed, the Applicants contend they will lose 20 acres of land if stay is not granted. However, the Plaintiff has argued, that the decision of the Land Registrar does not deprive the Applicants of land but rather delineates each party’s rightful portion in accordance with their respective titles. It is also notable that the Applicants did not challenge the decision within the 30 days provided under Section 79(1) of the *Land Registration Act*. The Land Registrar in his Ruling dated 19th December 2019 recommended for fixing of point pt8 to point pt2 to conform with the RIM. In yet another Ruling dated 24th November 2020 on the implementation of this recommendation, the Land Registrar observed that the Respondents had resisted the implementation and there was need for a court order to compel them to adhere to the Ruling.
17. This Court finds that the issues at hand are rendered moot by the *Land Registration Act*; Under Section 18 unless the decision is appealed against. The Applicant did not challenge the said decision.
18. I am of the view that this Application is unmerited and the same is dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF OCTOBER 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

N/A for the Plaintiff/Respondent.

Ms. Njoroge for Mr. Ntele for the 1st, 7th Defendants/Applicants and Interested Party.

N/A for the other Defendants.

Peter – Court Assistant.

