



**Sampa Investments Limited v Summer Properties Company Limited & 2 others;  
County Land Registrar Kwale & another (Third party) (Environment and Land  
Case 115 of 2021) [2025] KEELC 7255 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7255 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND CASE 115 OF 2021  
LL NAIKUNI, J  
OCTOBER 23, 2025**

**BETWEEN**

**SAMPA INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**SUMMER PROPERTIES COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**VIPUL JASVANTRAI SHETH ..... 2<sup>ND</sup> DEFENDANT**

**JITENDRA LAKHAMSHI DANDHIA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**THE COUNTY LAND REGISTRAR KWALE ..... THIRD PARTY**

**ATTORNEY GENERAL ..... THIRD PARTY**

**RULING**

**I. Introduction**

1. Before the Honourable Court for its determination is the Notice of Motion application dated 19<sup>th</sup> May 2025. It was filed by Summer Properties Co Limited, Vipul Jasvantrai Sheth and Jitendra Lakhamshi Dandhia, the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Applicants herein. The application was brought under the provisions of Order 42 Rule 6, Order 22 Rule 1, Order 51 Rules 1 of the Civil Procedure Rules, 2010, Section 3A of the *Civil Procedure Act*, Cap. 21 and all other enabling provisions of the law.
2. Despite of service of the application upon the Plaintiff/Respondent as supported by the 6 Paragraphed Affidavit of Service sworn by one Patrick Ngaine, an Advocate of the High Court and dated 30<sup>th</sup> May, 2025 particularly the contents of paragraphs 2, 3 and 4, the application never elicited any responses.



Thus, it was deemed to be unopposed but the Honourable Court will still proceed on to render a decision based on its own merit whatsoever.

## II. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Applicants case

3. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Applicants sought for the following orders:-
  - a. Spent.
  - b. That this Honourable Court be pleased to stay execution of the Judgement delivered on 27<sup>th</sup> February 2025 by Honourable Justice A. E. Dena, the decree and/or any consequential orders therefrom pending the hearing and determination of this application interpartes.
  - c. That this Honourable Court be pleased to stay execution of the Judgement delivered on 27<sup>th</sup> February 2025 by Honourable Justice A. E. Dena, the decree and/or any consequential orders therefrom pending the hearing and determination of the intended appeal
  - d. That this Honourable Court be pleased to deem as security the Certificates of Title to Kwale/Galu Kinondo/1636, 1637, 1638 and 1639 that are held by the Plaintiff/Respondents herein for granting stay of execution
  - e. That the costs of this application be provided for.
4. The application was premised on the grounds, testimonial facts and the averments under the Supporting affidavit sworn by Jitendra Lakhamshi Dandhia together with annexures marked as “JLD – 1 to 5” annexed thereto. He averred as follows that:-
  - a. He was the 2<sup>nd</sup> Defendant/Applicant and the co-director of the 1<sup>st</sup> Defendant/Applicant and thus competent and authorised to swear the affidavit.
  - b. The court in its Judgement delivered on 27<sup>th</sup> February 2025 granted the applicants 90 days stay of execution for payment of the decretal sum which lapsed on 28<sup>th</sup> May 2025 and after which the Applicants would be at imminent risk of execution.
  - c. However, the Applicants were aggrieved with the said Judgement and did lodge an appeal through the notice of appeal dated 5<sup>th</sup> March 2025 showing their intention to prefer an appeal. The said appeal raised serious appealable issues with an overwhelming chance of success
  - d. The court of appeal in its Judgement delivered on 21<sup>st</sup> February 2025 in Mombasa Court of appeal case of:- “Civil appeal no E011 of 2020 Coastland Properties Limited - Versus - Vipinkumar Nathial Shah & 2 others set aside the Judgment in “Mombasa ELC no 276 & 277 of 2013” delivered on 21<sup>st</sup> September 2020 and which previously nullified the Plaintiff/ Respondents title to the suit properties Kwale/Galu Kinondo/1636,1637,1638 and 1639 giving rise to the suit herein.
  - e. The court of appeal through its Judgement restored and validated the titles and ownership to the suit properties - Kwale/Galu Kinondo/1636,1637,1638 and 1639 held by the Applicants over the suit property.
  - f. The implication of this decision was that the Judgment rendered by this Court was rendered moot and unenforceable.



- g. In the event this application is not allowed the Plaintiffs would proceed to execute the Judgment for the decretal amount against the applicants and the appeal will be rendered nugatory.

### III. The responses

5. As already indicated, the application was unopposed.

### IV. Submissions

6. On 3<sup>rd</sup> March, 2025, while in the presence of the Learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Defendants/Applicants but in the absence of the Plaintiff/Respondent and the Interested Parties herein, the Honourable Court directed that the application dated 19<sup>th</sup> May, 2025 be canvassed by way of written submissions thereof.
7. Despite of these orders, the Honourable Court notes that unfortunately by the time of penning down this Ruling, none of the parties had obliged. Nonetheless, the Honourable Court has proceeded on to render its ruling on its own merit accordingly.

### V. Analysis and Determination

8. I have keenly assessed the application, the relevant provision of *the Constitution* of Kenya, 2010 and the statutes. In order to arrive at an informed, equitable and reasonable decision the Honourable Court has crafted the following three (3) salient issues for its consideration. These are:-
- a. Whether the Notice of Motion application dated 19<sup>th</sup> May 2025 the Defendants/Applicants herein has any merit or not.
  - b. Whether the parties herein are entitled to the reliefs sought.
  - c. Who will bear the costs of the application.

#### **ISSUE No. a). Whether the Notice of Motion application dated 19<sup>th</sup> May 2025 the Defendants/Applicants herein has any merit or not.**

9. Under this Sub heading, the main substratum of the filed application is to be granted a stay of execution pending the hearing and final determination of the intended appeal. The laws governing stay of execution are the provision of Order 42 Rule 6 of the Civil Procedure Rules, 2010 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 sub rule (1) unless—



(a) the court is satisfied that substantial loss may result to the Applicants 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 Applicants”.

10. The purpose and objective of the order for stay of execution is to preserve the substratum of the appeal in order to ensure that the appeal is not defeated. In the case of: “Consolidated Marine – Versus - Nampijja & Another, Civil App.No.93 of 1989 (Nairobi), the Court held that: -

“The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory”.

11. Further, the Court of Appeal in the case of:- “RWW – Versus - EKW (2019) eKLR” addressed itself on this as hereunder: -

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.....

9. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

12. From the above provisions of statute, an applicant for stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2), aforementioned: namely

- (a) that substantial loss may result to the applicant unless the order is made,
- (b) that the application has been made without unreasonable delay, and
- (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.

13. The first ground to be established is whether substantial loss may result to the Applicant unless stay of execution is granted. What amounts to substantial loss was expressed by the Court of Appeal in the case of “Mukuma \_ Versus - Abuoga (1988) KLR 645 where their Lordships stated that:-

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”

14. I am guided by definition espoused in the case of “James Wangalwa & Another – versus - Agnes Naliaka Cheseto [2012] eKLR” where the court opined thus:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case



here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR.....  
The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal.”

15. Thus, it is incumbent upon the Applicants to present compelling evidence demonstrating that the execution of the judgment will lead to an irreparable harm that fundamentally undermines their position as the prevailing party in the appeal, beyond the mere act of execution itself.

**ISSUE No. b). Whether the parties herein are entitled to the reliefs sought.**

16. Under this sub – heading, the Honourable Court will now endeavour to apply the above legal principles to the instant case. In so doing, for ease of reference I will reproduce the contents of ”the ratio decidendi” of the Judgement herein as rendered in the following terms:-

- i. A declaration that the Defendants fraudulently sold to the Plaintiff Land Kwale/Galu Kinondo/1636, 1637, 1638 & 1639 when the same was not available for sale.
- ii. The Defendants be jointly and/or severally ordered to compensate the Plaintiff Kshs. 79,000,000/- for the suit property Kwale/Galu Kinondo/1636-1639 being the purchase price paid with interest at court rates from the date of Judgement until payment in full.
- iii. Exemplary damages for fraud and deceit in the sum of Kshs. 500,000/-.
- iv. The above amounts are payable within 90 days of the date of this Judgement.
- v. There shall be no orders against the 3rd Party’s.
- vi. Costs of the suit are awarded to the Plaintiff under the provisions of section 27 of the Civil Procedure Act. It is so ordered.

17. From the record, and based on the amount of money that is due to be paid by the Applicants herein, the aspect of substantial loss is in my opinion evident. Indeed, in the event that the appeal succeeds then the Applicants would have been saved from payment of the sum of Kenya Shillings Seventy Nine Million (Kshs. 79,000,000/-). By all standards, this is a colossal amount of money. Thus, I discern that the is s substantial loss likely to be incurred if the application is not allowed.

18. On the second issue to determine is where the application for stay of execution was made without inordinate delay. From the record, the Judgment being appealed against was delivered on 27<sup>th</sup> February 2025. Subsequently, the application herein was filed on 19<sup>th</sup> May 2025. This was filed close to 2 months after the delivery of the Judgement. In this Honourable Court’s assessment, the application was filed timeously and expeditiously.

19. On the issue of security for costs, the principles on which a court exercises its discretion in an application for security of costs were considered in the case of “Keary Development v. Tarmac Construction (1995) 3 ALL ER 534”. F. Tuiyott., J in the case of “Ocean View Beach Hotel Ltd – Versus - Salim Sultan Mollo & 5 Others (2012) eKLR as follows: -

1. The court has a complete discretion, whether to order security, and accordingly it will act in the light of all the relevant circumstances.
2. The possibility or probability that the plaintiff company will be deterred from pursuing its claim by an order for security is not without more a sufficient reason for not ordering security.



3. The court must carry out a balancing exercise. On one hand it must weigh the injustice to the plaintiff if prevented from pursuing a proper claim by an order for security. Against that, it must weigh the injustice to the defendant. If no security is ordered and at the trial the plaintiff's claim fails and the defendant finds himself unable to recover from the plaintiff the costs which have been incurred by him in his defence of the claim.

4. In considering all the circumstances, the court will have regard to the plaintiff's prospects of success. But it should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure.

5. The court in considering the amount of security that might be ordered will bear in mind that it can order any amount up to the full amount claimed by way of security, provided that it is more than a simply nominal amount, it is not bound to make an order of a substantial amount.

6. Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled.

7. The lateness of the application for security is a circumstance which can properly be taken into account.”

20. The cardinal rule is that security for costs is given where a party is apprehensive that the other party might have activities that will hinder recovery of costs. In the instance, it is noted that the Respondents did not oppose the application and hence did not give any reason as to why the application ought to be denied or any proposal on security. The Applicants on the other hand did state that they were ready to comply with any orders as will be directed by court.

21. I find no reason advanced as to why the security for costs should be mandatory at this point, for that reason and taking that it is a discretion of the court, I direct that some amount of cash to be deposited into an interest earning bank account to be held for the time being by both Advocates for the Plaintiff/ Respondent and the Defendants/Applicants awaiting further direction. Further, that I also simply make orders that certificates of title to Kwale/Galu Kinondo/1636, 1637, 1638 and 1639 that are held by the Plaintiff/Respondent be held as security pending hearing and determination of the appeal.

#### **ISSUE No. c). Who will bear the costs of the application**

22. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court “Jasbir Rai Singh – Versus - Tarchalan Singh” eKLR (2014) and Cecilia Karuru Ngayo – Versus – Barclays Bank of Kenya Limited, eKLR (2014)”.

23. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR”, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

24. In the instant case, although the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Applicants herein have successfully established their case but whereupon the application was not opposed, the Court strongly feels that it is just, fair and reasonable that each party bears their own costs.



## VI. Conclusion & findings

25. Consequently, upon causing an indepth analysis to the framed issues herein, on the principles of preponderance of probabilities and the balance of convenience, the Honourable Court hereby now proceeds to make the following Orders. These are:-
- a. THAT the Notice of Motion application dated 19<sup>th</sup> May 2025 be and is hereby found to have merit but subject to the fulfilment of the Pre – Condition stipulated herein below.
  - b. THAT here be a stay execution of the Judgement delivered on 27<sup>th</sup> February 2025 by Hon. Justice A E Dena, the decree and/or any consequential orders therefrom is hereby issued pending the hearing and determination of the intended appeal.
  - c. THAT the Defendants/Applicants directed to deposit a sum of Kenya Shillings Five Million Five Hundred Thousand (Kshs. 5, 500.00) into an Interest earning Escrow Joint Bank Account to be held in the names of Messrs. Olendo, Orare & Samba Advocates for the Plaintiffs/ Respondents and Messrs. Nyaanga & Mugisha Advocates for the Defendants/Applicants of a reputable Commercial finance institution WITHIN THE NEXT (60) DAYS from this date for the due performance of such Decree and/or the four (4) Original Certificates of titles to all that parcel of Land known as Land Reference Kwale/Galu Kinondo/1636, 1637, 1638 and 1639 held by the Plaintiff/Respondents herein be deemed as security for granting stay of execution.
  - d. THAT in default of fulfilling any of these conditions hereof the Notice of Motion application to stand dismissed automatically by effluxion of time.
  - e. THAT each party to bear its own costs.

IT IS ORDERED ACCORDINGLY.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 23<sup>RD</sup> DAY OF OCTOBER 2025**

.....

**HON. MR. JUSTICE L.L NAIKUNI,  
ENVIRONMENT & LAND COURT  
AT  
KWALE.**

Ruling delivered in the presence of: -

- b. Mr. Daniel Disii, the Court Assistant.
- c. No appearance for the Plaintiffs/Respondents & the Interested Parties.
- d. Mr. Ngaine Advocate for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Applicants.

