



REPUBLIC OF KENYA



KENYA LAW
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**Shiganga v Muhanji (Land Case Appeal E021 of 2025)
[2025] KEELC 7283 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7283 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
LAND CASE APPEAL E021 OF 2025
EC CHERONO, J
OCTOBER 23, 2025**

BETWEEN

PETER WANYONYI SHIGANGA APPELLANT

AND

FERDNAND MUHANJI RESPONDENT

RULING

1. The Applicant, vide a Notice of Motion under certificate of urgency application dated 26th My 2025, seeks the following orders;
 1. (Spent)
 2. That this Honourable Court be pleased to issue an order of stay of execution of the judgment and/or Decree of the trial Court in Webuye MC-ELC No. E001 of 2022 pending hearing and determination of this application interpartes.
 3. That this Honourable Court be pleased to issue an order of stay of execution of the judgment and/or Decree of the trial court in Webuye MC-ELC No. E001 of 2022 pending hearing and determination of the Appeal herein.
 4. That this Honourable Court be pleased to issue an order injunctioning anyone including the Respondent, his agents, employees and/or anyone acting under her instructions from accessing, utilizing, developing and/or interfering in any way with the suit land being Ndivisi/Muchi/1839 pending hearing and determination of this Application interparties.
 5. That this Honourable Court be pleased to issue an order injunctioning anyone including the Respondent, his agents, employees and/or anyone acting under his instructions from accessing, utilizing, developing and/or interfering with the suit land being Ndivisi/Muchi/1839 pending hearing and determination of this Appeal.



6. That the costs of this Application be provided for.
2. The application is supported by the affidavit of the Applicant and eight grounds apparent on the face of the application sworn and dated on even date. The Applicant is seeking for an order of injunction under order 40 Rule 1(b) CPR. The Applicant is also seeking an order of stay though he did not invoke the court under Order 42 Rule 6 CPR. Order 40 Rule 1 (b) CPR, the law states as follows
 - “(1) Where in any suit it is proved by affidavit or otherwise-
 - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,
3. The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
4. It is trite that this is an appeal from the judgment/decree of Hon. Viola Yator, Principal Magistrate at Webuye PM-ELC No. E001 of 2022 delivered on 23rd May 2025. The principles for the grant of an injunction are now settled. First, the Applicant must establish a prima facie case with high chances of success. Secondly, he must demonstrate that he would suffer irreparable loss which cannot be compensated by an award of damages unless the order of injunction is granted and lastly, where the court is in doubt, it may decide the matter on a balance of convenience.
5. The Applicant/Appellant in his grounds on the face of the application averred that being the holder of indefeasible title, he had sought for eviction orders to issue against the Respondent who had forcefully and by way of threats occupied the suit land which rightfully belongs to him (Appellant)
6. He averred further that after refusing to move out, he filed the former suit being Webuye PM-ELC No. E001 of 2022 seeking eviction orders and the Respondent filed a statement of defence and counterclaim. That after the case was heard, the trial Magistrate dismissed his claim and allowed the Defendant/Respondent’s counterclaim. Copies of the pleadings of the former suit were attached to the supporting affidavit. The Respondent did not file response to the application despite service having been properly effected.
7. I have considered the application, the supporting affidavit and the annexures thereto. Though the Applicant did not invoke order 42 Rule 6 CPR for an order of stay pending appeal, He has however annexed a copy of an impugned judgment from the trial court delivered on 23/05/2025 being Webuye PM-ELC Case NO. E001 of 2022. Before granting the order of stay pending appeal, the Applicant/Appellant is required to demonstrate that he will suffer substantial loss unless the orders of stay are granted. Secondly, he must demonstrate that the application has been brought without unreasonable delay and finally, he must give security as the court may demand for the due performance of the decree as may ultimately be binding on him. In addition, the Applicant/Appellant must demonstrate that he has an arguable appeal which would be rendered nugatory unless the stay orders are granted.
8. On the first issue, the Applicant is required to demonstrate how he would suffer substantial loss unless the orders of stay are granted. I have perused the grounds on the face of the application and the supporting affidavit and find nowhere the Applicant/Appellant has alleged that he will suffer



substantial loss unless stay of execution orders are granted. The Court of Appeal discussed substantial loss in the case of *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* (1982-1988) KAR and held thus;

“It is usually a good rule to see if Order XLI 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.”

9. Again in the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* (2012) eKLR, Mr. Justice F. Gikonyo held as follows;

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, in 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. This is so because execution is a lawful process.

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. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silvertein vs Chesoni* (2002) 1KLR 867, and also in the case of *Mukuma v Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus;

...the issue of substantial loss is the cornerstone of both Jurisdiction. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

10. I agree with the two decisions above that an applicant seeking stay pending appeal must demonstrate how he would suffer substantial loss unless the order of stay is given. The Applicant herein has failed to satisfy this court what substantial loss he stands to suffer unless an order of stay is given
11. On the issue of security, the Applicant/Appellant at paragraph 9 of his supporting affidavit deposed that he is ready, able and willing to deposit a reasonable bond or a bank guarantee as security for costs for the due performance of any resultant decree that may be issued against him at the conclusion of the Appeal. That undertaking in my view demonstrates the Applicant’s commitment to abide by any order this honourable court may give for the Applicant to give security for the due performance of the decree as may be binding on him.
12. Thirdly, the Applicant must show that the application was brought without unreasonable delay. It is not in dispute that the impugned judgment/Decree was delivered on 23rd day of May, 2025 and the present application was filed four days later on 27th May 2025. A period of four days in my view is without unreasonable delay.
13. It is trite that a party seeking an order of stay pending appeal must establish the three conditions under Order 42 Rule 6 CPR sequentially. In this case, the Applicant has failed to demonstrate how he would suffer substantial loss unless the orders sought are granted.
14. Regarding the equitable orders of injunction, the applicant has not demonstrated that he would suffer irreparable injury which cannot be compensated by an award of damages unless the injunction order



is granted. He has not also shown that he has a prima facie case with overwhelming chances of success nor has he shown that should the court be in doubt and decide this matter on a balance of convenience, the same tilts in his favour.

15. In view of the foregoing, I find the Notice of Motion application dated 26th May 2025 devoid of merit and the same is hereby dismissed with costs to be in the cause.
16. It is so ordered.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 23RD DAY OF OCTOBER, 2025.

HON. E.C CHERONO

ELC JUDGE.

In the presence of;

1. Alovi for the Applicant.
2. Respondent/Advocate-absent.
3. Bett C/A.

