



**Sakwa & 2 others v Attorney General & another (Environment and Land  
Case 18 of 2021) [2025] KEELC 7157 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7157 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 18 OF 2021**

**CK NZILI, J**

**OCTOBER 22, 2025**

**BETWEEN**

**ZURAH KNIGHT SAKWA ..... 1<sup>ST</sup> PLAINTIFF**

**ALICE MAINA MARUGUTI ..... 2<sup>ND</sup> PLAINTIFF**

**FRANCIS LILECHI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**THE HON. ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Through an application dated 8.8.2025, the plaintiffs/ applicants are seeking orders of stay of execution for the judgment delivered on 4.7.2025, pending hearing of the intended appeal.
2. The grounds are that the applicants have filed an appeal, they are likely to be compelled to pay the damages awarded in the judgment, the decree holders may at any time effect the decree to the register of the suit land in compliance with the judgment, all of which will render the intended appeal nugatory. The applicants further aver that they are ready to furnish security, the application has been made without delay, the intended appeal has merits, and that the court has wide and unfettered discretion to grant the orders sought.
3. In the supporting affidavit sworn by Zurah Knight Sakwa on 8.8.2025, on behalf of the applicants, it is deposed that the declaration that the registration of the suit land in favor of the applicant be canceled and for the register to be amended to reflect either the Permanent Secretary, Ministry of Treasury, or Ministry of Housing and Urban Development as owners of the suit land, shall profoundly prejudice them. The notice of appeal and letter requesting court proceedings are attached as ZKS-2a and b.



4. The applicants depose that together with their families have been living on the suit land for over 23 years as a matrimonial home until 2019, when the deponent pulled down her house to construct a new home.
5. As a widow, the deponent avers that it is her only existing inheritance under her possession, which, if the judgment is enforced against the applicants, shall leave them destitute. A copy of the confirmed grant is attached as ZKS-3.
6. The applicants further aver that the appeal has high chances of success given that the trial court failed to consider the evidence their evidence, which was corroborated by some of the defendant's witnesses to the effect that the suit land had been allocated to the late Charles Lugano.
7. Again, the applicants depose that the court erred by relying on the defendant's evidence and documents that were unsigned, such as the survey map and the development plan, which showed that the suit land was never set aside for public use.
8. The applicants also depose that they were condemned to pay damages for acts done, yet the deponent holds a valid title deed which had not been revoked at the time, hence they were therefore being punished retrospectively. A copy of the statement of the land administration adjudication officer and the former land registrar, and the draft memorandum of appeal, are attached as ZKS- 4 and 5.
9. The applicants depose that the respondents stand to suffer no prejudice if the orders sought are granted.
10. The applicants rely on written submissions dated 1/10/2025 that the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules have been met. Reliance is placed on [\*Elena D. Korir -vs- Kenyatta University\*](#) [2014] eKLR and [\*James Wangalwa & Another -vs- Agnes Naliaka Cheseto\*](#) [2012] eKLR.
11. The 5<sup>th</sup> respondent filed written submissions dated 6/10/2025. It is submitted that the applicants have not met the requirements of Order 42 (6) of the [\*Civil Procedure Rules\*](#), that the orders are discretionary and may only be granted for sufficient cause over and above demonstration of substantial loss and provision of security for the due performance of the decree, should the intended appeal not succeed.
12. Further 5<sup>th</sup> respondent submits that the requirements are conjunctive or conjoined as evidenced by the use of the word ' and', such that if one is absent, then the application must fail; otherwise, an applicant must not only prove that the application has been made without unreasonable delay.
13. It is also submitted that the applicants must also demonstrate and provide evidence of substantial loss that they may suffer should the application be denied, on top of demonstrating willingness to offer security. Reliance is placed on [\*Gatirau Peter Munya -vs- Dickson Mwenda Kithinji & 2 others\*](#) [2014] eKLR, where the court held that the appeal or intended appeal is arguable and not frivolous; unless the order of stay sought is granted, the appeal or the intended appeal, if it were to succeed, would be rendered nugatory, and that it is in the public interest that the order of stay be granted.
14. Concerning whether the appeal is arguable and not frivolous, and whether the appeal will be rendered nugatory in the absence of the order of stay sought, if it were to succeed, the 5<sup>th</sup> respondent submits that the court correctly found that the suit property was public land and proceeded to order the cancellation of the entries in favour of the plaintiff. It is submitted that the title was found to be defeasible, for it was procured unlawfully and fraudulently, hence the reliefs in the counterclaim were merited.
15. The 5<sup>th</sup> respondent submits that the court's findings were informed by both viva voce and documentary evidence, which it properly analysed and contextualized before arriving at its determination. It is submitted that the applicants have only stated that the appeal is arguable, but have not demonstrated to this court how the said intended appeal is arguable. The 5<sup>th</sup> respondent submits that no material has



been placed before this court to prove that the applicants' intended appeal would be rendered nugatory if these interim orders were denied. It is submitted that the orders in the judgment of 04.07.2025 are reversible in nature, and damages would be adequate to compensate the applicants should they succeed in the appeal. Reliance is placed on Misc Civil Application Number 58 of 2013 *Constantious Wambu Migwi -vs- Gichugu Water & Sanitation Trust & Anor* and Civil Appeal No. 20 of 2015 *Rocky Driving School Limited -vs- Cute Kitchen Limited*, where the court cited *Daniel Chebutul Rotich & 2 Others -vs- Emirates Airlines* Civic Case No. 368 of 2001.

16. The 5<sup>th</sup> respondent submits that the assertions at paragraph 5 of the supporting affidavit are untrue and a misrepresentation of facts well within the applicants' knowledge; otherwise, the Plaintiffs would not be rendered destitute due to the execution of the judgment. Consequently, no loss would be occasioned to them.
17. On security for the due performance of the decree. The 5<sup>th</sup> respondent submits that the applicants have failed to demonstrate their ability or willingness to provide security for the performance of any decree, as required under Order 42 Rule 6(2) (c) of the *Civil Procedure Rules*. It is submitted that it is not sufficient to allege willingness to provide security without the provision of evidence or a proposal of the nature of the security.
18. The 5<sup>th</sup> respondent submits that recovery of public property is a matter of great public interest. In this case, it is deposed that the judgment was delivered in favour of the public following a fair hearing.
19. Stay of execution from the court which has rendered the judgment due for execution is a discretionary power exercisable where a sufficient cause has been shown why the decree should be postponed, and the decree holder denied an opportunity to enjoy the fruits of its judgment.
20. An applicant must demonstrate that there will be a substantial loss. Execution, per se, does not amount to substantial loss. It is a legal process as held in *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* (2012) eKLR.
21. An applicant must show through cogent and tangible evidence how the very essential core of the substratum of the appeal will be affected by not granting a stay of execution pending the hearing and determination of the intended appeal. In *Samvir Trustee Limited -vs- Guardian Bank Limited* [2007] KEHC 2438 (KLR), the court held that documentary or empirical material must be placed before the court to use in weighing the scales of justice and to be swayed on whether or not to grant stay orders. Mere assertions of substantial loss are not enough. On security, it is not for the court to suggest, but for the applicant, as a sign of good faith, to offer adequate security. See *RWW -vs- EKW* [2019] KEHC 6523 (KLR).
22. In this application, the 5<sup>th</sup> respondent has submitted that the entries likely to be effected on the register are reversible. Nugatory has been defined as futile or hopeless. See *Stanley Kang'ethe Kinyanjui -vs- Tony Keter 5 Others* [2013] eKLR. The applicants depose that the intended appeal, which has high chances, will be rendered nugatory if the changes to the register are effected by cancelling the title deed. The applicants have not offered to surrender the original title deed before the court.
23. The applicants have not offered to surrender a reasonable part of the awarded damages or a bond as a sign of good faith. Undertakings of any nature have not been suggested by the applicants. The nature and the value of the developments said to belong to the applicants on the suitland have not been substantiated by way of a valuation report.
24. Substantial loss, as held in *Kenya Shell Limited -vs- Benjamin Karuga Kibiru and Anor* [1986] KLR 410, is the cornerstone of the stay of execution. Without its demonstration, the court may not be swayed to exercise its discretion in favor of a judgment debtor at the expense of a decree holder, whose



rights have been defined in a lawful judgment. I think the public interest in this matter outweighs the narrow personal interests of the applicants. Entries to the register are capable of being reversed should the intended appeal succeed. I decline to grant the orders sought.

**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

Makabane for the Plaintiff/Applicant present

Basthale for Githinji for 5<sup>th</sup> Defendant present

A.G. for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants absent

