

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC APPEAL NO E071 OF 2024

SAMUEL CHERUIYOT BETT.....1ST APPELLANT/APPLICANT
LEONARD KIPLANGAT SIGEI.....2ND APPELLANT/APPLICANT
VERSUS

DAVID METHU GITHU.....RESPONDENT

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion Application dated 6th January 2025, seeking the following orders:
 - a) *Spent*
 - b) *THAT this Honourable court be pleased stay the execution of the orders contained in the judgment of the Chief Magistrate court at Molo, MCELCL/E068 of 2021 dated 17th December 2024 and order the that the status quo be maintained pending the hearing and determination of the appeal. (sic)*
 - c) *THAT costs of this application be provided for.*

2. The application is supported by the annexed affidavit of Samuel Cheruiyot Bett, the 1st Appellant/Applicant sworn on 6th January, 2025, where he deponed that the Court issued a judgment against him on 17th December, 2024, and no stay of execution was granted. He deponed that he filed an appeal in this court vide a Memorandum of Appeal dated 30th December, 2024.

3. It was his deposition that the decree holder has set in motion the process of evicting the applicants which will cause them substantial loss as they stand to lose the suit property which is their home having resided thereon for over twelve years. He further deponed that their appeal will be rendered nugatory if the judgment of the trial court is executed. The 1st Applicant deponed that the application has been brought without undue delay and the applicants are willing to abide by any conditions set by this Honourable Court including a deposit of security.

APPELLANT/APPLICANTS' SUBMISSIONS

4. Mr. Bore, counsel for the Applicants, filed submissions dated 25th July, 2025, and relied on Order 42 Rule 6 of the Civil Procedure Rules and submitted that the Appellants and their families reside on the suit property (Nakuru/Kasita/1849) and execution of the decree will lead to eviction rendering the appeal nugatory. On the issue of whether the application was filed without undue delay, counsel submitted that the impugned judgment was delivered on 17th December 2024, while the application was filed on 6th January, 2025, showing no unreasonable delay.
5. Counsel submitted that the Appellants are willing to abide by the conditions on security imposed by the court. Further, that the Respondents filed no response to the motion hence, the application is unopposed. Counsel relied on the cases of **Butt vs Rent Restriction Tribunal [1982] KLR 417**, **Loice Khachendi Onyango vs Alex Inyangu & another [2017] eKLR**, **Kenya Shell Ltd vs Kibiru & Another [1986] KLR 410** and **Macharia t/a Macharia & Co**

Advocates vs East African Standard [2002] KLR 63, and urged the court to allow the Application as prayed.

RESPONDENT'S SUBMISSIONS

6. Ms. Wangare, counsel for the Respondent filed submissions dated 1st October, 2025, and submitted that the judgment of the court was delivered on 17th December, 2024, and the date of the motion is not clear as it is dated 6th January, 2025 while the certificate of urgency is dated 6th February, 2025. Counsel submitted that there was a delay in presenting the application and relied on the case of **Jaber Mohsen Ali & another vs Priscillah Boit & another [2014] eKLR**.
7. On the issue of substantial loss, counsel submitted that the Applicants have not satisfactorily established the loss that they are going to suffer, as he has not produced a title deed to show that the suit parcel belongs to him. Counsel relied on the cases of **M/S Portreitz Maternity vs James Karanga Kabia Civil Appeal No 63 of 1997** and **Carter & Sons Ltd vs Deposit Protection Fund Board & 2 others Civil Appeal No 291 of 1997**.
8. On the issue of security, counsel submitted that no amount of security would compensate the Respondent for being unable to utilize his parcel of land, and relied on the case of **Turbo Transporters vs Absalom Dova [2014] eKLR** and urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

9. The issue for determination is whether this court should stay the execution of the judgment of the Chief Magistrate Court at Molo, MCELC/E068 of 2021 dated 17th December 2024.

10. Order 42 Rule 6 of the Civil Procedure Rules provides as follows:

“(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.”

11. The decision whether to grant an order of stay of execution is discretionary, but the court must exercise such discretion judiciously. The judgment in this case was delivered on 17th December 2024 and the application was filed on 6th January, 2025, which shows that there was no inordinate delay.

12. In the case of **Jaber Mohsen Ali & another v Priscillah Boit & another [2014]** the court held as follows:

“The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is

dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”

13. The cornerstone of an application for stay of execution is the establishment of whether an Applicant will suffer substantial loss if an order of stay is not granted as was held in the case of **KENYA SHELL LTD -V- KIBIRU 1980 KLR 410**. The Applicants deponed that the Respondent is in the process of setting the motion of evicting them from the suit land and if the same happens, they will suffer substantial loss.

14. The Applicants further submitted that their appeal will be rendered nugatory if the judgment of the trial court is executed. In the case of **Karungu v Masira & another (Environment & Land Case 540 of 2016) [2024] KEELC 5683 (KLR) (25 July 2024) (Ruling)**, this court held that:

“It should also be noted that where there is an order of eviction, it is not enough to say that a party shall be evicted, as that is a decree that was issued after the parties have been heard and a case is determined. A mere mention of imminent eviction is not proof of substantial loss.

15. In the Court of Appeal case of **RWW v EKW (2019) eKLR** the court held as follows:

“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. 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.”

16. Counsel submitted that the Applicants are ready and willing to furnish security, or conditions set by the court. In the case of **Exclusive Mines Limited & another vs Ministry of Mining & 2 others [2015] eKLR**, the court stated as follows:

“...On the issue of furnishing security, my understanding is that an applicant seeking an order of stay pending appeal should, as a sign of good faith, offer or propose any such security for the performance of the decree which the appeal has been preferred. I have looked at the Interested party’s affidavit in support of his Notice of Motion and nowhere in his seventeen (17) paragraph affidavit does he make any offer of any security nor bind himself to meet any such orders that the Court may impose. While the law leaves it to the Court’s discretion to make such orders as to security as it may deem fit, it is a good practice for an applicant seeking such an order to

intimate to the Court his preparation to meet such orders as the Court may impose as this assists the Court while exercising its discretion in that respect.”

17. In the interest of justice, I hereby grant a conditional stay of execution and order that the Applicants deposit Kshs. 200,000/ (Two Hundred Thousand Only) in a joint interest earning account of the advocates on record within 30 days, failure to which the stay lapses.
18. The Appellants to fast track the hearing of this appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF NOVEMBER 2025.

**M. A. ODENY
JUDGE**