



REPUBLIC OF KENYA



Ibrahim (Suing as her as the Co-administrator of the Estate of Sebit Abdalla Sebit - Deceased) v Al Islamiya Estates Ltd & another (Environment and Land Case 229 of 2018) [2025] KEELC 7770 (KLR) (12 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7770 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 229 OF 2018
MAO ODENY, J
NOVEMBER 12, 2025**

BETWEEN

ZENA IBRAHIM (SUING AS HER AS THE CO-ADMINISTRATOR OF THE ESTATE OF SEBIT ABDALLA SEBIT - DECEASED) PLAINTIFF

AND

AL ISLAMIYA ESTATES LTD 1ST DEFENDANT

SALAT ABDI ALI 2ND DEFENDANT

RULING

1. This ruling is in respect of the Applicant's Notice of Motion application dated 2nd July, 2025, seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to grant a stay of execution of the judgment/decreed delivered on the 10th day of June, 2025 pending the hearing of the appeal.
 - d. That costs be provided for.
2. The application is supported by the annexed affidavit of Salat Abdi Ali, the 2nd Defendant/Applicant sworn on 2nd July, 2025, where he deponed that the honourable court delivered a judgment declaring the Plaintiff as the lawful owner of the parcel of land known as Dundori/lanet Block 5 (new Gakoe) and he has filed a notice of appeal at the Court of Appeal. The 2nd Defendant/Applicant deponed that



unless the application is heard and allowed, the appeal may be rendered an academic exercise and he may suffer serious loss if the judgment is enforced before the appeal is heard to conclusion.

3. Zena Ibrahim filed a Replying Affidavit sworn on 25th July, 2025, and deponed that the application is without merit and a party who is successful in litigation should be allowed to enjoy the fruits of his/her judgment. In her deposition, she stated that if an order for stay is granted in the blanket version that the Applicant is proposing, then it will create an illegal state of affairs and urged the court to dismiss the application with costs.

Applicant's Submissions

4. Counsel for the applicant filed submissions dated 29th July, 2025, and identified the following issues for determination:
 - a. Whether the applicant has an arguable appeal that is not frivolous?
 - b. Whether if successful, the appeal would be rendered nugatory if the court failed to grant a stay?
5. On the first issue, counsel submitted that from the grounds raised in the draft Memorandum of Appeal, the applicant has shown he has an arguable appeal and the orders sought ought to be allowed. Counsel relied on provisions of Order 42 Rule 6 of the Civil Procedure Rules and the cases of Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others [2014] eKLR and Narok County Government & another vs Mwavali (Civil Application E071 of 2023) [2024] KECA 1799 (KLR).
6. On the second issue, counsel submitted that should the court not restrain the respondent from enforcing the judgment pending the hearing of the appeal, the applicant would suffer irreparable damage as he would be evicted before the appeal is heard, his title would be cancelled and another issued to the Respondent rendering the appeal nugatory

Respondent's Submissions

7. Counsel for the Respondent filed submissions dated 15th September, 2025 and identified the following issues for determination:
 - a. Whether the application has merit?
 - b. Who should bear the costs of the application?
8. On the first issue, counsel submitted that the Applicants have failed to establish that they will suffer substantial loss if a stay of execution is not granted. Counsel relied on provisions of Order 42 Rule 6 (1) of the Civil Procedure Rules and the cases of Runda Water Limited & another vs Timothy John Nicklin & another [2017] eKLR, Elena D. Korir vs Kenyatta University [2012] eKLR and RWW vs EKW [2019] eKLR.
9. Counsel further submitted that it is the Plaintiff/Respondent who has been in possession of the land and no substantial loss can be demonstrated by the 2nd Applicant.
10. On security, counsel submitted that the Applicants have not demonstrated any willingness to comply with the conditions this Honourable Court may impose and further that the Applicant has no arguable appeal. Counsel relied on the case of Absalom Dova vs Tarbo Transporters [2013] eKLR, Mwaura Karuga t/a Limit Enterprises vs Kenya Bus Services Ltd & 4 others [2015] eKLR, Gianfranco Manenthi



& another vs Africa Merchant Assurance Company Ltd [2019] eKLR, Focin Motorcycle Co Limited vs Ann Wambui Wangui & Another [2018] eKLR and PMK vs CKM [2020] eKLR.

11. On the second issue, counsel urged the court to dismiss the application with costs and relied on the case of Cecilia Karuru Ngayu vs Barclays Bank of Kenya (2016) eKLR.

Analysis And Determination

12. The issue for determination is whether an order of stay of execution should be granted pending the hearing of the Appeal. The law governing the grant of stay of execution is provided for under Order 42 Rule 6 of the Civil Procedure Rules. The Applicant needs to satisfy the Court on the following conditions before they can be granted the stay orders:

- a. The Applicant may suffer substantial loss if the order is not granted.
- b. The application has been made without unreasonable delay, and
- c. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.

13. In the Court of Appeal case of Chris Munga N Bichange & 2 others v Independent Electoral and Boundaries Commission & 2 others [2021] KEHC 6102 (KLR), the court explained the principles to be applied in considering an application for stay of execution as follows:

“..... The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”

14. Similarly, in the case of Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others Civil Appeal No. 291 of 1997, the court held as follows:

“... the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . . the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.”

15. The judgment in this matter was delivered on 10th June 2025, and the Application was filed on 2nd July, 2025, thus the same was filed without undue delay. On the issue of substantial loss which is the cornerstone of an application for stay of execution, the Applicant stated that he is in possession and if the order is not granted, he is likely to suffer substantial loss. He has not demonstrated the loss that he will suffer if the order is not granted.

16. In the case of Samvir Trustees Ltd. –vs- Guardian Bank Ltd. (Nairobi (Milimani) HCCC No. 795 of 1997, the court held that:

“... For the applicant to obtain a stay of execution, it must satisfy the court that substantial loss would result if no stay is granted. It is not enough to merely put forward mere assertions



of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and proper evidence of substantial loss ...”

17. Similarly, the case of Tropical Commodities Suppliers Limited 7 others v International Credit Bank Ltd (in liquidation) (2004) 2 EA 331 the Court persuasively defined the aspect of substantial loss thus:

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value is a loss that is merely nominal.”

18. It is also the Applicant’s contention that he would be evicted before the appeal is heard, his title would be cancelled and another issued to the Respondent rendering the appeal nugatory. 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”

19. The Applicant also stated he has an arguable Appeal. As to what constitutes an arguable appeal, the Court of Appeal in Nairobi Women’s Hospital vs. Purity Kemunto [2018] eKLR held that:

“To say that an appeal is arguable is another way of saying that it is not frivolous and that it raises a bona fide issue deserving full consideration by the Court. Even one bona fide issue will satisfy the requirement, for the law does not look for a multiplicity of arguable issues.”

20. Consequently, where an Applicant has not shown the substantial loss that he/she would suffer, then there would be no need to grant stay of execution orders like in this case. If the Appeal succeeds, then the court has the power to undo what has been done. I have considered the application and submissions by counsel and find that the Applicant has not satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules; hence, the application is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE

