



Kivure & 7 others (Suing on their behalf and on behalf of 4201 members of Kishamba B Group Ranch) v Mwakina and 2 others (Sued as defunct Chairman, Secretary and Treasurer respectively of the Executive Committee of Kishamba B Group Ranch) & 4 others; County Government of Taita Taveta & 35 others (Interested Parties) (Environment and Land Case 4 of 2024) [2025] KEELC 7729 (KLR) (Environment and Land) (10 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7729 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 4 OF 2024
EK WABWOTO, J
NOVEMBER 10, 2025**

BETWEEN

**JOHN KIVURE & 7 OTHERS & 7 OTHERS & 7 OTHERS PLAINTIFF
SUING ON THEIR BEHALF AND ON BEHALF OF 4201 MEMBERS OF
KISHAMBA B GROUP RANCH**

AND

**BENSON MLAMBO MWAKINA, ANTHONY KISHAGHA MWASI &
FLORENCE MALANDI (SUED AS DEFUNCT CHAIRMAN, SECRETARY
AND TREASURER RESPECTIVELY OF THE EXECUTIVE COMMITTEE OF
KISHAMBA B GROUP RANCH) 1ST DEFENDANT
CABINET SECRETARY MINISTRY OF LANDS, HOUSING AND PHYSICAL
PLANNING 2ND DEFENDANT
DIRECTOR OF LAND ADJUDICATION/SETTLEMENT 3RD DEFENDANT
COUNTY LAND REGISTRAR - TAITA TAVETA 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

AND

**COUNTY GOVERNMENT OF TAITA TAVETA INTERESTED PARTY
DUNSTUN KIMBIO & 34 OTHERS & 34 OTHERS & 34
OTHERS INTERESTED PARTY**

(In respect to the 1st Defendant's application dated 16th October 2025)



RULING

1. The court is asked to stay the execution of its judgment delivered on 25th September 2025 pending the hearing and determination of the intended appeal at the Court of Appeal. The grounds are set out on the face of the application and in the supporting affidavit of Benson Mlambo Mwakina, sworn on 16th October 2025. The gist of the Applicant's case he is aggrieved by the judgment of the court and that the court failed to consider his suit in MSA ELC No. 116 of 2015 as consolidated. It was also stated that the court vide its judgment delivered on 25th September 2025 had directed various actions to be completed within 90 days from the date of the delivery of the judgment and thus the court should preserve the substratum of the intended appeal.
2. The Applicant further averred in his further affidavit dated 28th October 2025 that he received letters from the County Government of Taita Taveta calling on compliance with the judgment which he intends to appeal and that it is only fair and just that the court grants the orders sought.
3. The application was opposed by the Plaintiffs, Anthony Kishagha Mwasi and the 21st to 34th Interested parties. The Plaintiffs filed a Replying Affidavit sworn by John Shingira Mwawasi on 27th October 2025, Anthony Kishagha Mwasi filed a Replying Affidavit sworn on 3rd November 2025 and grounds of opposition dated 31st October 2025 while the 21st to 34th Interested parties filed grounds of opposition dated 31st October 2025.
4. The Plaintiffs averred that there is no evidence that the Plaintiffs have engaged or instructed any parties to execute the judgement of the Court, the impugned judgment directed the Defendants to comply with the provisions of the *Community Land Act* and all the relevant laws in the registration, adjudication, demarcation, survey, subdivision, demarcation and allocation of any portions of the suit property without any costs to the application and that there is no appeal against the provisions of the *community Land Act* or relevant laws directed to be complied with and hence no possibility the intended appeal will be rendered nugatory. It was also averred that the Applicant has failed to demonstrate any arguable appeal against the judgment of the court and hence no sufficient cause to grant the reliefs sought.
5. Anthony Kisghagha Mwasi equally opposed the application. It was contended that Benson Mlambo Mwakina has no authority nor consent from the members of Kishamba B Group Ranch to file the instant application, the intended appeal in an abuse of the court process and only seeks to further personal interests of the Applicant.
6. The 21st to 34th Interested parties averred that the Applicant is pursuing his own personal agenda, no substantial loss or prejudice to be suffered has been demonstrated should the judgment be implemented and further that the entire application is unmeritorious.
7. During the plenary hearing of the application, Learned Counsel Mr. Olendi submitted on behalf of the Applicant while Learned Counsel Mr. Litoro made oral submissions on behalf of the Plaintiffs.
8. I have considered the application, the rival affidavits filed and the submissions made by the parties to buttress their assertions. What calls for determination in this matter is the issue for stay of execution pending the hearing and determination of the intended appeal.
9. Order 42 rule 6 (1) of the Civil Procedure Rules is clear on the power of the court to grant stay of execution pending appeal. It allows the court appealed from as well as the court appealed to, for sufficient cause, to order stay of execution of a decree or order.



10. Order 42 rule 6(2) stipulates that the applicant needs to demonstrate three elements. There must be demonstration that substantial loss will result if stay is not granted; secondly, the application must be made without unreasonable delay; and finally, there needs to be security for the due performance of the decree. Much has been said about the respective strengths of the cases of the parties. Apart from the three elements, the essence of an application for stay pending appeal is aimed at preserving the subject matter of litigation to avoid a situation where a successful appellant only gets a paper judgment. That said, it must be appreciated that the respondent is a successful litigant who is entitled to benefit from the fruits of the judgment. The interests of both parties therefore need to be balanced as was stated by the Court of Appeal in the case of *Reliance Bank vs Norlake Investments Ltd* (2002) 1 EA 227.
11. In the instant application, the court in delivering its judgment on 25th September 2025 directed various actions to be completed within 90 days from the date of the delivery of the said judgment. In considering the affidavits and annexures that were filed herein, there was no evidence adduced confirming any commencement of the execution of the said judgment, none was provided to this court and as such the Applicant has failed to demonstrate at this stage any substantial loss to be suffered should stay not be granted.
12. Substantial loss is what is to be prevented from happening. See *James Wangalwa vs Agnes Naliaka Cheseto* (2012) eKLR. The same has not been demonstrated. The status of the execution process has not been mentioned or verified. It is not enough to allege substantial loss without substantiating the same.
13. In the end, this court finds no merit in the application. The same is hereby dismissed. Each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED ON 10TH NOVEMBER 2025

E. K. WABWOTO

JUDGE

