

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLC NO.E007 OF 2023

CALLEN MORAA PLAINTIFF

VERSUS

PETRONILLA LIONA MASINDE DEFENDANT

RULING

1. The application before me is that dated 3 July 2025 filed by the unsuccessful plaintiff. She seeks an injunction to restrain the defendant/respondent from evicting, disposing, or interfering with the applicant's occupation of the land parcel Bassi/Masige/2077, pending hearing of an intended appeal to the court of appeal.
2. The application is opposed.
3. To put matters into context, the applicant commenced this suit vide a plaint filed on 20 September 2023. She claimed to be the widow of one Naftal Bogesho Mogire who died in the year 2001 while an employee of Kenya Power & Lighting Company Limited. At the time of death, the deceased was the registered proprietor of the land parcel Bassi/Masige/2077. She filed suit claiming that the defendant/respondent had fraudulently transferred the title into her name imposing herself as the rightful wife yet she (the applicant) was the real widow.
4. The respondent's position was that she was the true wife of the deceased and that upon his demise she filed a succession case and obtained a confirmation of grant on 9 May 2005. The land was then transferred to her to hold in trust for the children of the deceased.
5. I heard the case and I found that indeed the respondent had demonstrated that she obtained title pursuant to Nairobi High Court Succession Case No. 338 of 2003. She got registered as proprietor of the suit land on 30 August 2011. There was no evidence of the applicant being recognized as a wife or beneficiary of the deceased in the succession case and she indeed filed no objection within that case. I therefore did not find merit in the contention of the applicant that the respondent had obtained title fraudulently and proceeded to dismiss her suit with costs.

6. Aggrieved, the applicant filed a notice of appeal and has now presented this application for stay pending appeal.
7. In the supporting affidavit, she avers that there is real danger that the respondent may dispose the suit land since she holds title to it and eventually evict and disposes her and her children from what she has all along known as her home.
8. The respondent has filed a replying affidavit to oppose the motion. She has reiterated that she obtained title after a confirmation of grant. She avers that the applicant has not demonstrated any loss that is not compensable by an award of damages in case she succeeds on appeal. She contends that the applicant's allegation that the suit land is her matrimonial home is only meant to elicit sympathy.
9. I have considered the above and also the submissions of counsel for the applicant and respondent.
10. What is before me is an application for stay pending appeal and I stand guided by the provisions of Order 42 Rule 6 (2) which 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 above law informs the court not to make an order of stay of execution unless the court is satisfied of three things, being :
 - (i) That the applicant stands to suffer substantial loss.
 - (ii) That the application has been made without unreasonable delay.
 - (iii) That there is provided such security for the due performance of the decree in the event that the applicant loses the appeal.
12. In our case, I see no issue with delay. The question here revolves around substantial loss and security. The applicant claims that she stands to be evicted now that she has lost the case. She is also of opinion that the respondent may dispose of the suit land.

13. I am actually prepared to grant an order of stay of execution pending appeal, subject to the applicant depositing in court or in a joint interest earning account the sum of Kshs. 500,000/= , within the next 14 days, as security, in the event that she loses the appeal. The parties to agree and open the joint interest earning account within the next seven (7) days and the monies be deposited in this account within the following seven (7) days. If they cannot agree on the account then the monies be deposited in court as I have directed. I have arrived at this figure of Kshs. 500,000/= being guided by the fact that the suit land is 2.6 acres in a rural agricultural setting. If the applicant makes good this deposit of security, the status quo prevailing in the suit land may be maintained until the appeal is concluded. If not then she will not be entitled to any order of stay of execution pending appeal.
14. In the event that the monies are not deposited as directed then the costs of this application will be costs in the appeal. If the monies are not deposited then the application be deemed as dismissed with costs.
15. Orders accordingly.

DATED AND DELIVERED THIS 6 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of :

Mr. Begi for the plaintiff/applicant

Mr. Loitong h/b for Mr. Kanyonge for the defendant/respondent

Court Assistant – Michael Oyuko