



**Ngige (Suing as the Personal Representative of David Mahugu Thondu  
– Deceased) v Kariuki & 4 others (Environment and Land Case  
138 of 2018) [2025] KEELC 7610 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7610 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 138 OF 2018  
LC KOMINGOI, J  
NOVEMBER 6, 2025**

**BETWEEN**

**CATHERINE NJERI NGIGE (SUING AS THE PERSONAL REPRESENTATIVE  
OF DAVID MAHUGU THONDU – DECEASED) ..... APPLICANT**

**AND**

**GEORGE NGURE KARIUKI ..... 1<sup>ST</sup> RESPONDENT  
DISTRICT LAND REGISTRAR NGONG ..... 2<sup>ND</sup> RESPONDENT  
DISTRICT LAND CONTROL BOARD ..... 3<sup>RD</sup> RESPONDENT  
DISTRICT LAND SURVEYOR KAJIADO ..... 4<sup>TH</sup> RESPONDENT  
HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 14<sup>th</sup> August 2024 brought under; (Order 42 Rule 6; Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions).
2. It seeks orders;
  1. Spent.
  2. Spent.
  3. There be an order of Stay of execution of Judgement delivered on 25<sup>th</sup> July 2024 by this court in this matter pending the hearing and determination of the intended appeal; and
  4. The costs of this Application be provided for.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 5.



4. The Application is supported by the Affidavit of Catherine Njeri Ngige, the Applicant herein, sworn on the 14<sup>th</sup> August 2024.
5. The Application is opposed.  
There is a Replying Affidavit sworn by the Plaintiff/Respondent.
6. On the 16<sup>th</sup> June 2025, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
7. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. The issue for determination is whether the Application is merited.
8. Order 42 rule 6(1) (2) of the Civil Procedure Rules provides that;

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(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.”

9. It is the Applicant’s case that the Appeal raises bona fide issues worthy of consideration.  
Further that the Appeal would be rendered nugatory if stay is not granted as the 1<sup>st</sup> Respondent may dispose of the suit property. She has relied on the case of National Industrial Credit Bank Limited Vs. Aguinas Francis Wasike (2006) eKLR. . She prays that the Application be allowed.
10. The 1<sup>st</sup> Respondent on the other hand submits that no evidence has put forward to demonstrate substantial loss if these orders are not granted. The Applicant does not reside on the suit property. He prays that the Application be disallowed.
11. In the case of Stanley Kangethe Kinyanjui Vs. Tony Ketter & 5 Others (2013) eKLR the court stated thus;

“each case must be determined on its own facts and circumstances; that an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous; and that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is



reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.”

12. I find that the Applicant has demonstrated substantial loss in that the suit property may not be available should she succeed in the Appeal, if these orders are not granted.

13. In conclusion I find merit in this Application and I grant the orders sought namely;

a. That the Judgement delivered on 25<sup>th</sup> July 2024 is hereby stayed pending the hearing and determination of the Appeal.

On Condition that the Applicant does deposit Kshs.500,000/= as security for costs in a joint interest earning account in the names of the Applicant’s counsel and the 1<sup>st</sup> Respondent’s counsel within forty five (45) days from the date of this ruling. In default the orders of stay shall lapse automatically.

b. That costs of this Application be borne by the Applicant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6<sup>TH</sup> DAY OF NOVEMBER 2025.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

Ms. Munyiva for the Applicant.

Ms. Mwikali for Mr. Murimi Murango for the 1<sup>st</sup> Respondent.

N/A for the other Respondents.

Court Assistant – Mateli.

