



REPUBLIC OF KENYA



**Ruto v Kimani & 2 others (Environment and Land Case 211 of 2016)
[2025] KEELC 7854 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7854 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 211 OF 2016
MAO ODENY, J
NOVEMBER 14, 2025**

BETWEEN

JOEL KIPKOECH RUTO PLAINTIFF

AND

SACKEY PETER KIMANI 1ST DEFENDANT

JOHN WACIRA CHIRI 2ND DEFENDANT

JOSEPH NGANGA KANG'ETHE 3RD DEFENDANT

RULING

1. This ruling is in respect of the 2nd and 3rd Defendant's Notice of Motion application dated 9th June, 2025, which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to issue an order of stay of execution of the Judgment delivered on 8th May, 2025 pending the Hearing and determination of an Appeal in the Court of Appeal against the said Judgment. (sic)
 - d. That the costs of this Application be provided for.
2. The application is supported by the annexed affidavit of John Wachira Chiri sworn on 9th June, 2025. Counsel submitted that the Applicants have filed a Notice of Appeal dated 13th May, 2025, being dissatisfied with the whole judgment delivered on 8th May, 2025. Further that here has been no inordinate delay in filing the application and the Respondents will suffer no prejudice as they shall still execute the judgment in the unlikely event the Appeal is unsuccessful.



3. Joel Kipkoech Ruto, the Plaintiff/Respondent filed a Replying Affidavit sworn on 2nd July, 2025, and deponed that the application lacks merit and the Applicants have not shown how they will suffer substantial loss if the stay is not granted. He further stated that the Applicants have filed their application after an unreasonable delay which is prejudicial to him. It was his deposition that the Applicants have not offered any security for the due performance of the decree as required by law and prayed that the application be dismissed with costs.

Applicants Submissions

4. Mr. Karanja, counsel for the Applicants filed submissions dated 30th July 2025, and supplementary submissions dated 6th October, 2025, and submitted that the Applicants reside with their families on the subject parcels of land and their immediate eviction and demolition of the buildings shall result in the Applicants suffering substantial loss.
5. It was counsel's submission that the court may order that no transfer, sale, alienation, sub-division or any leasing or charging of the parcels of land should take place, pending the hearing and determination of the applicants' appeal.
6. Mr. Karanja urged the court to grant the payers sought and relied on the cases of Tonui vs Wekesa & 5 others Kitale H.C ELC No 23 of 2018 (2025) KEELC 1326 (KLR), Mayenga & 2 others vs Khamu & another Mombasa H.C ELC No E024 OF 2024 KEELC 7407 (KLR) and Musembi & 13 others vs Moi Educational Centre Co Ltd KESCO 50 (KLR) Supreme Court of Kenya Petition No 2 of 2018.

Respondent's Submissions

7. Mr. Kipkoech, counsel for the Respondent filed submissions dated 22nd July, 2025, and identified the following issues for determination:
 - a. Whether this application is merited?
 - b. Who bears the costs of the application?
8. On the first issue, counsel relied on the provisions of Order 42 Rule 6 of the Civil Procedure Rules and submitted that the Applicants have not presented any evidence of how they will suffer substantial loss if execution of the judgment occurs. Counsel submitted that this application was filed thirty days after judgment was delivered showing inordinate delay and further that they have not provided any security for the due performance of the decree.
9. Mr. Kipkoech further submitted that the balance of convenience is in favour of the Respondent who stands to suffer great injustice as he will be deprived of enjoying the fruits of the judgment. Counsel relied on the cases of Jason Ngunba Kogu & 2 others vs Intra Africa Assurance Company Limited (2014) eKLR, Machira t/a Machira & Co Advocates vs East African Standard (No 2) (2002) KLR 63, Kenya Shell Ltd vs Benjamin Karuya Kibiru and another [1982-1988] 1 KAR 1018 and RWW vs EKW [2019] eKLR, and urged the court to dismiss the application with costs to the Respondents.

Analysis And Determination

10. The issue for determination is whether the Applicants have met the threshold for the grant of a stay of execution of the judgment delivered on 8th May, 2025, pending the hearing and determination 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 which guides the court on whether to grant a stay of execution or not.



11. A party must file the application without undue delay, must prove that he/she will suffer substantial loss if stay orders are not granted, and offer such security as the court orders for the due performance of such decree or order as may ultimately be binding on him/her.
12. In the case of Charles Kariuki Njuri v Francis Kimaru Rwara (suing as Administrator of the Estate of Rwara Kimaru alias Benson Rwara Kimaru (deceased) [2020] eKLR, the court stated that the purpose of stay of execution is to preserve the substratum of the case.
13. The grant of stay of execution is discretionary and such discretion must be exercised judiciously as was held in the Court of Appeal case of Butt v Rent Restriction Tribunal (1982) KLR 417 which provides guidance on how a court should exercise discretion and held that:
 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
 2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge's discretion.
 3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of proceedings.
 4. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount or rent in dispute and the appellant had an undoubted right of appeal.
 5. The court in exercising its powers under Order XLI rule 4 (2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse'.
14. On whether there was inordinate delay in filing the application, the judgment was delivered on 8th May, 2025 and the application is dated 9th June, 2025, is reasonable time, hence no delay.
15. On the issue on whether the Applicants have proved that they will suffer substantial loss if the stay orders are not granted, the Applicants stated that they reside together with their families on the suit land, and their eviction and demolition of the buildings shall result in substantial loss.
16. Similarly, in the case of Charles Wahome Gethi vs. Angela Wairimu Gethi [2008] eKLR, the Court of Appeal held that:

“... it is not enough for the Applicants to say that they live or reside on the suit land and that they will suffer substantial loss. The Applicants must go further and show the substantial loss that the Applicants stand to suffer if the Respondent execute the decree in this suit against them.”
17. The Applicants have not proved that they will suffer any substantial loss if an order or stay of execution is not granted. The court therefore declines to grant the orders sought in the application dated 9th June 2025. The Appellants are hereby directed to take steps to fast track the hearing of the appeal. Costs to abide by the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 14TH DAY OF NOVEMBER 2025.

M. A. ODENY



JUDGE

