

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
PETITION NO. 14 OF 2018

FLORENCE CHIMOLI SHIRAMBA PETITIONER/ APPLICANT
JACKSON KIPRUTO NGETICH PETITIONER/ APPLICANT
ROBERT WAMBOGO OMBAYO PETITIONER/ APPLICANT
RAHMA CHEPKORIR PETITIONER/ APPLICANT
AND 28 OTHERS PETITIONERS/ APPLICANTS

VERSUS

THE COUNTY GOVERNMENT OF
UASIN GISHU 1ST RESPONDENT
THE NATIONAL LAND COMMISSION 2ND RESPONDENT
THE CHIEF LAND REGISTRAR
UASIN GISHU COUNTY 3RD RESPONDENT
HON. ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. By Notice of Motion dated 4th November, 2024, the Petitioners/ Applicants sought the following orders: -
 1. Spent.
 2. That the stay orders of execution pending Appeal issued on the 9th November, 2023 be and are hereby vacated and/or set aside.

3. That the consequent conditional stay orders issued on the 14/12/2023 be vacated, suspended and/or set aside and the judgment revert in favour of the petitioners.
4. That the 1st Respondent do pay the costs of this Application.
2. The application is premised on the 12 grounds on its face and supported by the affidavit sworn by the 2nd Petitioner/Applicant on even date, on his own behalf and on behalf of the other petitioners/Applicants.
3. He explained that judgment was entered in the matter in their favor and against the Respondents on 19.04.2023.
4. Aggrieved by the said judgment, the 1st Respondent lodged an appeal against the said decision and simultaneously filed an application dated 12.06.2023 seeking stay of execution pending appeal.
5. It is his contention that the said application was heard and determined vide a ruling of this court issued on 09.11.2023 and whose effect was to grant orders for stay of execution on condition that the 1st respondent deposits in court a sum of Kshs. 2,000,000/= as security for costs within 14 days from the date of the ruling and failure to which the stay orders would automatically lapse.
6. It was further his assertion that the 1st respondent having failed to comply with the strict timelines, once again moved to court vide the application dated 01.12.2023 seeking an extension of time within which to comply.

7. Vide a ruling issued on 14.12.2023, this court allowed the application and extended the time for compliance to 60 days.
8. It is his claim that the 1st respondent with a lot of impunity has failed to comply with orders of the court and has never deposited the sum of Kshs. 2,000,000/= being the security of costs as directed by the court. Further, despite the matter coming up in court on several occasions to wit, 10/6/2024, 10/7/2024, 17/9/2024, 3/10/2024, 8/10/2024 and 17/10/2024, the 1st Respondent has failed, ignored and/or neglected to comply with the court orders.
9. He thus argued that court orders should not be issued in vain hence the stay orders issued on 09/11/2023 and extended on 15/11/2023 should be vacated and the judgment revert.
10. He maintained that the application had been filed promptly and in good faith and that no prejudice would be suffered by the 1st Respondent if the orders sought are granted. He urged the court to allow the application as sought.
11. The application was opposed. The 1st Respondent filed a Grounds of Opposition dated 04.11.2024. They dismissed the application as being frivolous, vexatious, ill-conceived, bad in law and an abuse of the court process.
12. It was their claim that the application has not met the threshold for the grant of the orders sought. That the orders issued on the 09.11.2023 provided that

the security for costs of Kshs. 2,000,000/= be deposited within 14 days failure to which the stay orders shall lapse. Further, the orders of 14.12.2023 only extended time for compliance by 60 days.

13. They therefore contend that the 1st Respondent having failed to comply and/or fulfil the conditions outlined for the stay of execution within the stipulated timelines, the stay of execution orders granted automatically lapsed and as such, there are no orders to set aside.
14. In conclusion, they urged the court to dismiss the application with costs to the 1st respondent.
15. The 3rd and 4th respondents also opposed the present application vide their Grounds of Opposition dated 20.06.2025. They dismissed the application for not meeting the legal threshold for setting aside orders. That there was no demonstration by the applicants of deliberate disobedience, any prejudice arising from the stay or inequity in the maintenance of status quo.
16. It was their contention that the 1st respondent, being a devolved unit of government is exempted from providing security for costs as envisaged in Order 42 Rule 6 and 8 of the Civil Procedure Rules. To this end, they argued that the order requiring the 1st respondent to deposit security for costs should be set aside.
17. They further argued that the failure by the 1st respondent to provide security should not invalidate the stay of execution orders granted since the requirement for the deposit of security for costs does not apply to it.

18. They further argued that the 1st respondent has the ability to pay its liabilities when the time comes and if the appeal is not successful. That if the application is allowed, the same would amount to prejudging the appeal and prematurely reinstating the judgment pending the appeal and that the same would highly prejudice the 3rd and 4th respondents.
19. In conclusion, they argued that in the interest of justice, fairness and the right to be heard, the court should dismiss the application with costs to the 3rd and 4th respondents.
20. The Application was canvassed by way of written submissions. The applicants filed their written submissions dated 25.08.2025 while the 1st respondent filed their submissions dated 25.09.2025 together with authorities, which I have read and considered.
21. On a perusal of the court record and on the online filing platform CTS, I have not seen any submissions filed on behalf of the 3rd and 4th respondents. Be that as it may, I will proceed to render my decision as hereunder

Analysis and Determination

22. Having carefully considered the application and the supporting affidavit, the responses thereto and the various annexures, it is my considered opinion that the following issues arise for determination: -
 - i. Whether the orders sought for setting aside, review and/or vacating the orders issued on 09.11.2023 are tenable

- ii. Whether the applicants have met the threshold for the grant of the review, setting aside and/or vacating the orders for stay of execution issued on 09.11.2023 and extended on 14.12.2023 as sought
- iii. Who shall bear the costs of the application.

Whether the orders sought for setting aside, review and/or vacating the orders issued on 09.11.2023 are tenable

23. It is common ground that judgment was entered herein on 19.04.2023 in favor of the petitioners. It is also not in dispute that aggrieved by the said decision, the respondents lodged an appeal against the said judgment.
24. The 1st respondent upon lodging an appeal against the judgment of this court (differently constituted) also filed an application dated 12.06.2023 seeking stay of execution pending appeal.
25. The said application was heard and determined vide a ruling issued on 09.11.2023 by my predecessor Hon. E. Obaga J. and whose effect was to grant a conditional order for stay of execution. At paragraph 11 of the said ruling, which I seek to reproduce, the honourable court held as follows: -

“I therefore grant stay of execution on condition that the applicant deposits a sum of Kshs. 2,000,000/= as security for costs within 14 days failing which the stay orders shall lapse.....”
26. The 1st Respondent unable to comply with the strict timelines of 14 days within which to deposit the amount as directed, filed another application dated 01.12.2023 seeking a 60 days’ extension of time within which to comply with the terms/condition of the order of stay of execution. The said

application was heard and determined on 14.12.2023 whereby the court allowed the application and extended the time for compliance for 60 days.

27. It is further not in dispute that the 1st respondent has never complied with the conditional stay as stipulated by depositing a sum of Kshs. 2,000,000/- in court even after the 60 days extension.
28. The 1st respondent herein argued that having failed to comply with the conditions as outlined by the court when granting the orders for stay of execution, upon the lapse of the 60 days extension period, the orders of stay of execution automatically lapsed by operation of the law and there is therefore nothing to be set aside.
29. The applicants on the other hand agree that the orders of stay of execution have since lapsed by operation of the law owing to the disobedience and non-compliance with the terms/ conditions for the order but maintain that there is need for the said orders to be set aside and vacated and for the execution of the judgment to revert.
30. A critical look at the order of the court issued on 09.11.2023 was to the effect that failure to deposit the sum of Kshs. 2,000,000/= in court as security for costs, the stay orders would lapse. The question that therefore follows is whether upon such automatic lapse of the orders of stay of execution for non-compliance by the 1st respondent depositing the sum of Kshs. 2,000,000/= within the 60 days extended period, whether the orders sought in the instant application are tenable.

31. My answer to the above is in the negative. The orders of stay of execution having lapsed by operation of law for failure to comply with the conditions outlined for the deposit of the sum of Kshs. 2,000,000/= within the 60 days extended period, there is no stay orders in existence and consequently, there are no orders to be set aside, vacated and/or reviewed.
32. The 1st Respondent being in default of the orders issued on 09/11/2023 and extended on 14/12/2023, the natural consequence is that the orders for stay of execution lapsed and execution shall resume.
33. I have also noted the issues raised by the 3rd and 4th Respondents in their Grounds of Opposition, particularly on the application of Order 42 Rules 6 and 8 on the requirement for the deposit of security of costs by the 1st respondent. I wish to point out that this court having rendered its ruling on the matter, the issues raised can only be canvassed at the appellate stage.
34. Having held that the orders sought in the present application are untenable, it is my considered opinion that discussing the remaining issues would amount to an academic exercise.

Who shall bear the costs of the application

35. The general rule is that costs will follow the event. In the instant case, having found that the orders sought are untenable, I find that the respondents are entitled to costs for defending the application.

36. In the upshot, I accordingly find that the Application dated 21st October, 2024 is **not merited** and is hereby **dismissed** with costs to the 1st, 3rd and 4th Respondents.

37. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 6th day of November, 2025.

HON. C. K. YANO
JUDGE

Ruling delivered in the presence of: -

Gacuca for the 1st Respondent

Mr. Omboto for Petitioners

No appearance for the Respondent

Court Assistant – Laban