



Anzette & 6 others v Nechesa & 6 others (Environment and Land Appeal E089 & 92 of 2025 (Consolidated)) [2025] KEELC 8217 (KLR) (19 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E089 & 92 OF 2025 (CONSOLIDATED)
A NYUKURI, J
NOVEMBER 19, 2025**

BETWEEN

JOSEPH MUBO ANZETSE & 6 OTHERS APPELLANT

AND

THOMPSON NECHESA & 6 OTHERS RESPONDENT

RULING

Introduction

1. Kakamega ELC Appeal No. 89 of 2025 was consolidated with Kakamega ELC Appeal No. 92 of 2025. The earlier appeal was filed by five appellants while the second appeal was filed by two appellants. On consolidation, ELC Appeal Case No. 89 became the leading file and the two appellants in Appeal No. 92 of 2025 were deemed the 6th and 7th appellants. The respondents in the two appeals are the same. The appellants in Appeal No. 89 of 2025 filed application dated 3rd October 2025 while the appellants in Appeal No. 92 of 2025 filed application dated 14th October 2025. Both applications seek stay of execution of the judgment of the subordinate court delivered on 19th September 2025 in Mumias SPMC L&E Case No. 165 of 2018, pending the hearing and determination of this appeal.
2. Therefore, this ruling is in respect to the aforesaid two applications dated 3rd October 2025 and 14th October 2025.
3. The application dated 3rd October 2025 is anchored on the affidavit sworn by the 1st appellant/applicant dated 3rd October 2025. The applicants' case is that the judgment delivered by the trial court has serious and negative implications against the applicants. That if stay is not granted, they will suffer irreparable loss as they will be rendered landless, and will lose their homes which are on the suit property. That the suit property is their ancestral land where they have lived for over 60 years. That there is a church owned by the 6th appellant and that if execution proceeds, the community will have



been denied the right to worship guaranteed under *the Constitution*. That they had sought stay without delay.

4. The application dated 14th October 2025 was anchored on the supporting affidavit sworn by the 6th appellant. He stated that he is the registered proprietor of parcel No. E. Wanga/Eluche/2852 where he has been in peaceful possession since 2014 and has extensively developed the same with permanent commercial premises. That the respondents' complaints before the trial court in Mumias SPMC ELC No. 44 of 2023, were that his land had encroached on the respondents' parcel Nos. 2531, 2532 and 2536. That the said suit was consolidated with Mumias MCELC 165 OF 2018. That the trial court made a judgment granting an injunction in favour of the respondents. That the status quo which is that he is the one in possession, be maintained. That the trial court ordered his eviction in 60 days. That the trial court did not point out the alternative site where his land is. That he has an arguable appeal. That if execution proceeds, he stands to suffer substantial loss. He attached a title deed and photographs of permanent buildings on the suit property and pleadings in the lower court.
5. The applications were opposed. Thomson Ngai Mate Nechesa the 1st respondent swore a replying affidavit dated 22nd October 2025. He stated that the appellants' titles were subdivisions of parcel No. 85 owned by the 1st appellant and that the respondents' titles emanated from subdivisions of title No. 85. That there is a road between parcel Nos. 84 and 85. That in the course of subdivision of parcel No. 85, the 1st appellant crossed the road on the ground and hived off part of the respondents' parcel, leading to a boundary dispute filed before the land registrar in 2018. That the Land Registrar fixed the boundary after visiting the site. That the applicants have ignored the boundary and have trespassed into the respondents' land. That the appellants do not occupy their portions but have crossed over to the other side. That the appellants should vacate the respondents' land and move to their land hence the allegation that they will be rendered landless is incorrect.
6. The applicants filed supplementary affidavit dated 3rd November 2025. They stated that the respondents' documents are new documents which were never produced at the trial. That the map, mutation form dated 9/11/2011 and sketch or development plan and field diagram are strange documents. That the sketch plan marked TNMN -2a does not show any road. That in view of the contradictions the appeal raises triable issues and stay should be granted.
7. Parties filed submissions which the court has duly considered

Analysis and determination.

8. The court has carefully considered the two applications, response thereto and the parties' submissions. The single issue that arises for the court's determination is whether the applicants have met the threshold for grant of orders of stay of execution pending appeal.
9. Order 42 Rule 6 of the Civil Procedure Rules provides for the jurisdiction of the court to grant orders of stay of execution pending appeal as follows;

Stay in case of appeal [Order 42, rule 6]

- (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.
10. Thus, to succeed in an application for stay pending appeal, an applicant ought to demonstrate that they stand to suffer substantial; that they have sought stay without unreasonable delay and show willingness to provide security for the due performance of the decree that may issue against them.
11. In the instant case, it is not disputed that the appellants have permanent buildings on the suit property. The applicants have stated that they will be rendered homeless and landless if eviction proceeds. In opposing the application, the respondents allege that the applicants will not be landless because they have titles in their names and should just move to their land. I have considered the pleadings filed in the lower court and it is clear to me that the bone of contention between the two camps herein is the boundary between parcel Nos. 84 and 85. The question of location of the contested parcels in my view as framed by the appellant is an arguable and triable question. The respondents have not stated that the appellants have other homes on the other titles or shown where exactly the appellants' titles are. Therefore, I am satisfied that the appellants have demonstrated substantial loss and an arguable appeal.
12. In the premises I find and hold that the applications dated 3rd October 2025 and 14th October 2025 are both merited and are thus allowed. I order that the execution of the judgment delivered on 19th September 2025, in Mumias SPM ELC Case No. 165 of 2018 is hereby stayed pending the hearing and determination of this appeal.
13. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 19TH DAY OF NOVEMBER, 2025

A. NYUKURI

JUDGE

In the presence of

Ms. Omar for the 6th and 7th appellants and holding brief for Ms Lugulu for the 1st to 5th appellants

Mr. Akwala for the respondents

Court Assistant: Delphine

