

or damaging the maize and fence on the suit land as per photos annexed as **AKP-(2)** using hired goons.

- 3.** The applicant deposes that the hired goons are now stationed on the suit land, accessing it to salvage the maize or harvest it, as per the photos attached as annexure **AKP-(3)**.
- 4.** It is deposed that unless the orders sought are issued, he stands to suffer great loss and his appeal will be rendered nugatory; otherwise, he is willing to offer any security as the court may order for the due performance of the decree.
- 5.** The application is opposed through a replying affidavit of Susan Cherop, sworn on **11/10/2025**. It is deposed that a decree was obtained following the judgment, attached as annexure **SC-(1)** dated **8/8/2025**, requiring the applicant to hand over vacant possession by **16/9/2025**, which he has disobeyed; hence, any further stay on the land is an illegality, which the court cannot approve, for its orders are not made in vain.
- 6.** It is deposed that the applicant should have removed the dry maize stalks from the suit land, which he didn't, otherwise, save for the maize, the applicant has nothing else on the land for an order of eviction to issue.

7. It is deposed that the decree was served on the OCS Kapenguria, who provided security on **27/9/2025**, when the respondent made a peaceful entry into the suit land, took possession with no force, violence, or destruction of any property.
8. The respondent deposes that the applicant had been informed of the entry and was indeed present during the exercise, but sought no extension of time within which to vacate the land, after the expiry of the **3** months.
9. The respondent deposes that she and her brothers only cleared a portion measuring **100 ft** by **100 ft** as **SC-(2) (a)-(d)** and nothing else, otherwise if the applicant can seek permission of the court to purge the contempt, obtain permission to enter the land and remove his maize stalks, there will be no problem, otherwise the decree has already been implemented and the title to the land issued on **3/10/2025** as per annexures marked **SC-(3) (a)-(e)** showing the change on the land register.
10. The respondent deposes that the filing of a notice of appeal and requesting for typed proceedings cannot operate as a stay otherwise the applicant has not met the conditions of stay of execution, for there is an inordinate delay moving to court, explanation for the

same is lacking, substantial loss has not been substantiated and the other factors to show such loss, are missing to establish rendering the appeal nugatory.

- 11.** The respondent deposes that as the successful party together with her siblings, they are entitled to enjoy the fruits of the judgment, which land they have been kept out of since **2016**, and have no other land. The respondent deposes that it is not enough to say that the applicant will offer security without demonstrating the nature of the security he is ready to give.
- 12.** The respondent relies on written submissions dated **11/10/2025**. Reliance is placed on **Jaber Mohsen Ali & another -vs- Priscillah Boit & another [2014] eKLR, Jonathan Kiprotich Barsulai -vs- John Kiprop Chemweno & Others [2015] eKLR,** and **James Wangalwa & Another & Another -vs- Agnes Naliaka Cheseto [2012] eKLR.**
- 13.** **Order 42 Rule 6 (2) (1)** of the Civil Procedure Rules grants the High Court power to issue stay of execution for sufficient cause, while **Order 42 Rule 6(2)** of the Civil Procedure Rules provides that it may grant stay if there is substantial loss, the application is made without unreasonable delay and security for the due performance of decree is provided.

14. In **James Wangalwa & Another -vs- Agnes Naliaka Cheseto** (*supra*), the court said that executing per se does not amount to substantial loss, and a party must establish other factors to show that the execution shall create a state of affairs which will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal.
15. Substantial loss, as held in **Kenya Shell Limited -vs- Benjamin Karuga Kibiru & Another (1982-88) 1**, is the very cornerstone of stay. In **Co-operative Bank of (K) Ltd -vs- Banking Insurance & ... Union (K) [2015] eKLR**, the court held that an order of stay is an interim order seeking to delay the performance of a positive obligation set out in a decree as a result of a judgment, and the said delay presupposes the existence of a situation of stay.
16. In **Kenya Commercial Bank Limited -vs- Tamarind Meadows Limited & 7 Others [2016] eKLR**, the court said a negative order may not be stayed.
17. As to security, in **Arun C Sharma -vs- Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others [2014] eKLR**, the court held that the purpose of security is to guarantee the due

performance of the decree but not to punish the judgment debtor,

- 18.** In *Samvir Trustee Ltd -vs- Guardian Bank Ltd, Nairobi Milimani HCC No. 797 of 1997,* the court held that in considering whether or not to grant the stay, the court has to be convinced that there exists special circumstances to sway its discretion in a particular manner, the yardstick being to weigh or balance the scales of justice demanding the two compelling rights bearing in mind that one is entitled to enjoy the fruits of its judgment for he has a definitive right out of the judgment.
- 19.** As to delay, the law has not set out what the maximum or minimum delay is. It all depends on the circumstances of each case, for even one day's delay could be fatal.
- 20.** Applying the foregoing case law to the instant application, the judgment of this court was delivered on **16/6/2025**. The application herein was filed on **3/10/2025**. The **90**-days automatic stay expired on **16/9/2025**. The applicant knew of the expiry date.
- 21.** The applicant took close to **16** days after the expiry to move the court to stay the decree. Already, the decree he wishes to stay had been extracted and implemented on the register. Effective entry to the

- land to take vacant possession occurred on **21/9/2025**. A copy of the records shows that entries **Nos. 3, 4, 5, and 6** were made in **6/8/2025**. The inordinate delay has not been explained. In **Jaber Mohsen Ali & Another -vs- Priscilla Boit** (*supra*), an order to vacate the land had been issued for **30** days. There was no complaint raised. An application for stay was filed after **30** days. The court held that the occupation of the land beyond **30** days was illegal.
- 22.** A court of law should not be used as an instrument to enforce an illegality. The issue of maize stalks on the land was within the knowledge of the applicant even on the judgment date. The applicant, other than alleging nugatory aspect, has not substantiated how the destruction of the maize crops will render the appeal useless.
- 23.** Sufficient cause is what the applicant has to show why a temporary injunction should issue pending appeal. Sufficient cause or good cause means sufficient for a particular purpose or enough of it for the purpose. See *Collins Dictionary*. In **Madhupaper International Ltd -vs- Kerr [1985] KLR 840**, the court held that an applicant must sufficiently prove their case.

24. Courts faced with an application of this nature, as held in **African Safari Club Limited -vs- Safe Rentals Limited [2010] KECA 270 (KLR)**, have to act fairly and justly, having regard to substantive justice and to weigh the hardship of the parties before them.
25. The status quo as of the filing of this application, according to the respondent, had changed since delivery of the judgment. Vacant possession and change of entries in the copy of the records have already taken place. An injunction pending appeal should not be granted if it will cause more harm or injustice to the respondent than the applicant. Reversing all these changes would be an injustice to the respondent, who has a right to enjoy the fruits of her judgment. The applicant has not offered any specific security. The purpose of an injunction is to keep things in status quo as held in **Assanad -vs- Pettite (1989) KLR 242**. Here, the status quo has already changed.
26. On the other hand, to grant or refuse an application for a stay is a discretionary power. See **Butt -vs- Rent Restriction Tribunal [1982] KLR 417**. How the applicant will be reduced to an explorer in the judicial process if his appeal succeeds has not been substantiated with cogent and tangible evidence. See

**Geoffrey Muriungi & another -vs- John Rukunga
M'imonyo suing as Legal representative of the
estate of Kinoti Simon Rukunga (Deceased)
[2016] KEHC 6762 (KLR).**

27. The applicant, other than alleging substantial loss or his appeal being rendered nugatory, has not demonstrated any exceptional circumstances, loss, or damage. The upshot is that I find the application dated **3/10/2025** lacking merits. It is dismissed with costs.

28. Orders accordingly.

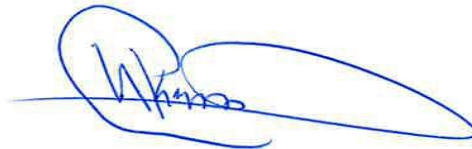
Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 26th day of November 2025.

In the presence of:

Court Assistant – Dennis

Karani Nyongesa for Kiarie for Respondent present

Ingosi for the Applicant present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**