



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kibui v Lawkin Company Limited & 3 others (Environment and Land Appeal
E046 of 2025) [2025] KEELC 8175 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8175 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E046 OF 2025
TW MURIGI, J
NOVEMBER 21, 2025**

BETWEEN

RICHARD KAHARIRI KIBUI APPLICANT

AND

LAWKIN COMPANY LIMITED 1ST RESPONDENT

PURITY WANJIRU MUTHEE 2ND RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT 3RD RESPONDENT

PAUL KAMAU WAWERU 4TH RESPONDENT

RULING

1. By an amended Notice of Motion dated 7th June 2025, brought under Order Sections 1A, 1B and 3A of the Civil Procedure Code, Order 42 Rule 6(1), (2), (3) and Order 51 Rule 1 of the Civil Procedure Rules, the Applicant seeks the following orders:-
 1. Spent.
 2. Spent
 3. Spent
 4. Spent.
 5. That an order of temporary injunction restraining the Respondents from evicting the Appellant Applicant from the suit land, whereupon the premises are situated, or interfering with the Appellant Applicant's possession, occupation, use, and enjoyment of the premises do issue pending the hearing and determination of the appeal.



6. That a conservatory order of stay of the ruling delivered by Hon M Otindo on the Notice of Motion application dated 19th June 2024 in Milimani MELC E272 2024 delivered on 11th February 2025 and all the consequential orders do issue pending the hearing and determination of the appeal.
 7. That an order of stay of proceedings in Milimani MELC 272 2024 do issue pending the hearing and determination of the appeal.
 8. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of S.W. Kiragu Advocate, sworn on even date.

The Applicants' Case

3. The deponent averred that the Applicant is the occupier of the suit property, having leased it on 17th January 2022 from the 4th Respondent. He further averred that sometime in March 2025, the 1st and 2nd Respondents issued the Appellant an illegal notice demanding that he vacate the suit property within 48 hours.
4. That on 15th March 2025, the 3rd Respondent also issued the Appellant an illegal notice demanding that he vacate the suit property within 7 days. As a result, the Appellant challenged the legality of the notice in Milimani MELC No. 272 of 2024, which was ultimately dismissed on 11th February 2025.
5. The Applicant is apprehensive that he will suffer irreparable harm if the Respondent proceeds with the eviction. He argued that his appeal has high chances of success and would be rendered nugatory if execution proceeds.

The 1st And 2nd Respondents Case

6. The 1st and 2nd Respondents filed a replying affidavit of Purity Wanjiru Muthee dated 1st April 2025 in opposition to the application.
7. The deponent asserts that the application is misconceived and an abuse of the court process. She averred that the 1st Respondent is the registered proprietor of the suit property which the Applicant has unlawfully occupied and has refused to vacate
8. She asserted that there is no lease agreement between the Applicant and the 1st Respondent nor receipt of rent therefrom. She further asserted that the Applicant has not demonstrated that the 4th Respondent is the owner of the suit property.
9. Following the ruling, she instructed her advocate to issue the Appellant a notice to vacate the suit property. Although under Section 152E of the *akn ke act 2012 6 Land Act*, the 3-month notice was not mandatory, she issued a 3-month notice but the Applicant failed to disclose this to the court.
10. She maintained that the application is a delaying tactic intended to prevent the Respondents from regaining possession of their property. She further asserted that the Applicant has not satisfied the conditions for the grant of a stay of execution pending appeal.
11. The application was canvassed by way of written submissions.

The Appellants Applicants Submissions

12. The Applicant filed his submissions dated 9th July 2025.



13. On behalf of the Appellant, Counsel outlined the following issues for the Court's determination:-
 - i. Whether the Applicant has an arguable appeal with high chances of success.
 - ii. Whether the application meets the threshold for issuance of the injunctive order, the conservatory order of the impugned ruling and an order of stay of the proceedings in the lower court matter.
14. Counsel submitted on the principles governing the grant of a stay of execution as outlined in the case of *Butt Vs Rent Restriction Tribunal* (1982) KLR 417.
15. Regarding the first issue, Counsel submitted that the Appeal raises weighty and arguable issues because it seeks to challenge the trial court's interpretation of Section 152E of the *akn ke act 2012 6 Land Act*, which held that the provision is not mandatory. To support this argument, reliance was placed on the case of *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others* (2103) eKLR.
16. Regarding the second issue, Counsel submitted that the Applicant is in actual possession of the suit property and would suffer irreparable harm if evicted, which cannot be remedied by damages. It was submitted that the balance of convenience is in favour of maintaining the status quo through the issuance of an injunctive order.
17. Regarding the second issue, Counsel urged the court to issue a stay of execution as the appeal raises arguable issues.

The Respondents Submissions

18. The Respondent filed his submissions on 1st April, 2025.
19. Counsel submitted that the issues of ownership over the suit properties were heard and determined by the dispute resolution mechanisms provided under the *akn ke act 1968 35 Land Adjudication Act* and finally by the Court in the ELC Misc No. 18 of 2015. Counsel argued that the application is res judicata to the decisions of the quasi-judicial tribunals and to ELC Misc Application No. 18 of 2015. Counsel further submitted that the Applicants have not satisfied the conditions outlined in Order 45 Rule 6 of the Civil Procedure Rules.

Analysis And Determination

20. Having considered the application, affidavits, and the rival submissions, the following issues fall for determination
 - a) whether the Applicant has met the threshold for the grant of a temporary injunction pending the hearing and determination of the appeal herein?
 - b) whether the Applicant has satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for the grant of stay of execution pending appeal?
21. The Applicant seeks a temporary injunction pending the hearing and determination of the Appeal. Order 42 Rule 6(6) provides as follows;

“Notwithstanding anything contained in sub-rule (1) of this rule, the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just, provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”



22. The principles for the grant of a temporary injunction pending appeal are well settled. The principles governing the grant of a temporary injunction pending appeal were outlined in the case of Patricia Njeri & 3 Others Vs National Museum of Kenya [2004] eKLR, as follows;
 - a. “An order of injunction pending appeal is a discretionary order which will be exercised against an applicant whose appeal is frivolous.
 - b. The discretion should be refused where it would inflict great hardship than it would avoid.
 - c. The applicant must show that to refuse the injunction would render the appeal nugatory.
 - d. The court should also be guided by the principles in *Giella vs. Cassman Brown* [1973] EA 358.”
23. In the matter at hand, the Applicant argued that he has an arguable appeal which will be rendered nugatory if an injunction is not granted. It is not in dispute that the Applicant is in occupation of the suit property. The Applicant is challenging the eviction notice issued by the Respondents. I find that he has an arguable appeal which might be rendered nugatory if he is evicted.
24. The record shows that the Appellant filed his memorandum of appeal dated 5th March 2025. In ground No. 2 of the Appeal, the Appellant faulted the Trial Magistrate for holding that the 1st and 2nd Respondents were not obligated under Section 152E to issue three months to the Appellant to vacate the suit property. He contended that he is in occupation of the suit property.
25. The 1st Respondent, on the other hand, contends that he is the registered owner of the suit property. It was further contended that the Applicant is unlawfully occupying the suit property to the detriment of the respondent.
26. Based on the evidence placed before me, it is my considered view that the Appellant has established a prima facie arguable appeal.
27. The Appellant Applicant claims that he would suffer substantial loss as he would be evicted from the suit property.
28. In the trial before the lower court, the Appellant sought a permanent injunction restraining the Defendants jointly and severally from interfering with his occupation of the suit property. His application was dismissed vide the ruling delivered on 11th February 2025. From the evidence presented before me, it is not in dispute that the Applicant is in occupation of the suit property.
29. I find that the Applicant has shown that he will suffer irreparable harm if he is evicted before the appeal is heard and determined.
30. The purpose of a temporary injunction is to preserve the substratum of the case pending the hearing and determination of the suit. To preserve the suit property, I direct that both parties maintain the status quo pending the hearing and determination of this appeal.
31. The Applicant seeks a stay of execution pending the hearing and determination of the appeal.
32. The application was dismissed on the 11th February 2025, with costs to the Respondents, and therefore it is a negative order. The issue for determination is whether a negative order can be stayed.



33. In the case of Western College Farts and Applied Sciences Vs Oranga & Others (1976) KLR 63, the Court whilst considering whether an order for stay can be granted in respect of a negative order, stated as follows;

“But what is there to be executed under the judgment, the subject of the intended appeal. The high court has merely dismissed the suit with costs. Any execution can only be in respect of costs.”

34. Similarly, in the case of Kaushik Panchamatia & 3 others Vs Prime Bank, the court stated, and I fully adopt;

“....that a negative order is incapable of being stayed because there is nothing to stay. It therefore follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed by the applicants”. The Court of Appeal made it clear that a negative order is not capable of being stayed for costs.”

35. This Court notes that the order sought to be stayed is a decision that dismissed the application. It is therefore a negative order. A negative order is incapable of being stayed.

36. In the end, the application dated 7th June 2025 partially succeeds in the following terms:-

- a) A temporary injunction is hereby issued restraining th Respondents from evicting the Appellant Applicant from the suit land or interfering with the Appellant Applicant’s possession, occupation, use and enjoyment of the premises pending the hearing and determination of the Appeal.
- b) Costs to abide with the outcome of the Appeal.

.....
HON. T. MURIGI

JUDGE

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF NOVEMBER, 2025.

In The Presence Of: -

Kiragu for the Appellant

Mugi holding brief for Kamau Muturi for the 1st and 2nd Respondents

Ahmed – Court Assistant

