

which sought amendment of the judgment given on 19th March, 2018 by substituting LR No 1757/6 with LR 1757/19.

3. The Applicant being aggrieved with the ruling of 22nd May, 2024 has preferred an appeal against the ruling to the Court of Appeal.
4. The Respondent contends that if stay of execution is not granted, execution will proceed and the appeal which he has filed will be rendered nugatory and he will thereby suffer substantial loss.

Respondent's Contention

5. The Respondents opposed the Applicants' application based on replying affidavit sworn on 26th February, 2025. The Respondents contend that the Applicant's application is misconceived, frivolous and vexatious. A judgment was given in favour of the Respondents on 19th March, 2018. The Respondent appealed against the judgment to the Court of Appeal which appeal was dismissed. An application by the Applicant for leave to appeal against the Court of Appeal decision to the Supreme Court was not certified urgent.
6. During the pendency of Court of Appeal judgment, the Applicant subdivided LR No.1757/6 into 1757/19 to 30. This necessitated an application for amendment which resulted into the impugned ruling.
7. The Respondents contend that the Applicant has not demonstrated what loss if any he will suffer if execution goes on. They further contend that the application has been brought too late without any explanation.
8. The Respondents further state that the Applicant has not paid costs in excess of four million shillings which was ordered by the court. They state that any grant of stay will be an affront to the judgment of the Environment and Land court and the Court of Appeal. They state that the appeal against the ruling of 22nd May, 2024 will not succeed and is solely made for purposes of subverting justice.

9. The Respondents contend that Applicant has not disclosed that he has since subdivided LR No. 1757/19 into 1757/103 to 122. They state that the Applicant cannot be let to enjoy his right of appeal and infinitum.

Parties Submissions

10. The parties were directed to file written submissions. The Applicant filed his submissions dated 28th April, 2025. The Respondents filed their submissions dated 14th May, 2025.

11. The Applicant submitted that he has an arguable appeal with a likelihood of success and that if stay is not granted he will suffer substantial loss and the appeal will be rendered nugatory.

12. The Respondents submitted that an application for stay in this court is fettered by the conditions which were set out by the Court of Appeal in the case of **Vishram Ravji Halai –vs- Thornton & Turpin (1963) Ltd (1990) ECLR** where it was stated as follows:

“Whereas the power of the Court of Appeal to grant a stay pending appeal is unfettered, the jurisdiction of the High Court to do so under Order 42 Rule 6 of the Civil Procedure Rules is fettered by four conditions stated below:

- a. Whether the judgment debtor will suffer substantial loss/damage.**
- b. Whether sufficient cause has been established.**
- c. Whether the application has been filed without due delay.**
- d. Whether such security as the court orders for the due performance of such decree or order as may ultimately be binding on the Applicant has been given.**

13. The Respondents submitted that the Applicant had not demonstrated any substantial loss which will result if stay is not granted. They relied on the case of **Macharia t/a Macharia & Co. Advocates –vs- East African Standard No. 2 (2002) 2 KLR 63** where it was held as follows:

“It is not enough merely to state that substantial loss will result, or that the appeal if successful will be rendered nugatory. That will not do. If the Applicant cites, as a ground, substantial loss, the kind of loss likely to be sustained must be specified, details or particulars thereof must be given, and the conscience of the court, looking at what will happen unless a suspension or stay is ordered, must be satisfied that such loss will really ensue and that if it comes to pass, the Applicant is likely to suffer substantial injury by letting the other party proceed further with what may still be remaining to be done or in execution of an award or decree or order, before disposal of the Applicant’s business (eg appeal or intended appeal)”.

Analysis and Determination

14. I have considered the Applicant’s application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has met the threshold for grant of stay pending appeal.
15. The impugned ruling was delivered on 22nd May, 2024. The present application was made on 20th August, 2024. The application was made on almost 3 months later. There was no explanation given for the delay.
16. On the issue of substantial loss, the Applicant has not demonstrated what substantial loss he will suffer if stay is not granted. The Respondents have been in occupation of their respective portions for decades. That is why they got judgment based on adverse possession. The Respondents are seeking to have titles in their names for the properties they are occupying. Even if titles are issued and it is found that the titles were improperly issued based on amended decrees, the titles will simply revert to the original position. The Applicant’s appeal will therefore not be rendered nugatory.

Disposition

17. Security for costs is normally considered where the Applicant has demonstrated substantial loss. As the Applicant has not demonstrated any substantial loss which will ensue absent stay, I find that his application lacks merit. The same is dismissed with costs to the Respondents.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 20TH DAY OF NOVEMBER, 2025.**

IN THE PRESENCE OF:

Mr. Mbindyo for the Respondents.

Ms. Jematia for Mr. Ndalila for Applicant.

Court assistant - Nelima