

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KILGORIS**  
**ELC (LA) E022 OF 2025**

**PETRO SARUNI OLE KOITAAT.....**  
**APPELLANT/APPLICANT**

**VERSUS**

**LEONARD OLE SEME.....1<sup>ST</sup>**  
**RESPONDENT**

**EQUITY BANK LIMITED.....2<sup>ND</sup>**  
**RESPONDENT**

**BHAVIN ASWIN GUDKA.....3<sup>RD</sup>**  
**RESPONDENT**

**COMMISSIONER OF LANDS.....4<sup>TH</sup>**  
**RESPONDENT**

**RULING**

1. This Ruling is in respect of the application by way of Notice of motion dated 06.05.2025 which the application seeks orders *interalia* that;
  - (i) Spent
  - (ii) That this Honourable court be pleased to set aside and/or vary the ruling of the honorable Magistrate dated 3<sup>rd</sup> April 2025 pending hearing and determination of this Appeal.
  - (iii) That this Honourable court be pleased to order stay of proceedings and all subsequent orders issued in Kilgoris ELC case No. E002 of 2023 and Kilgoris ELC case No. E001/2023 and Kilgoris ELC case No. E001/2021 formerly Narok (sic) ELC case No. E002/2020 for Examination and give directions it considers appropriate to enable the fair administration of justice is being administered.
  - (iv) THAT costs of this application be provided for.

- (v) The application is premised on grounds *interalia* that the suit before the lower court as dismissed for contravention of section 4 and section 7 of the Civil Procedure Act vide a Ruling dated 30<sup>th</sup> of April 2025.
  - (vi) Aggrieved by the said Ruling, the Applicant filed an Appeal challenging *interalia* the “erroneous” interpretation of section 4 and section 7 of the Civil Procedure Act.
  - (vii) That it is imperative there be a stay of further proceedings and orders issued in Kilgoris ELC case No. E002/2023 and Kilgoris ELC No. E001/2021, and the said files called for examination of issuance of the directions; which unless the proceedings are not stayed, the Applicant will suffer prejudice.
  - (viii) That Article 50 of the Constitution reserves the right for any dispute to be resolved by an application in law and be decided in a fair and public hearing before a court of law; and further that Article 165(6) and (7) of the Constitution entitles the High Court to have supervisory jurisdiction which ensure that court records can be called and directions issued in any matter.
2. A supporting affidavit of the Applicant Mr. Petro Saruni Ole Koitaat, was also filed and the deponent deposes the grounds in support of the application and has annexed a copy of the Impugned Ruling, taxation Notice and bill of costs, NTSC in relation of Kilgoris ELC Case No. E002/2023.
3. The 3<sup>RD</sup> Respondent filed a Replying affidavit in opposition to the Application, who deposed *interalia*;
- (i) That the Applicant herein was the former registered owner of Transmara/Moyoi/1489 and had been advanced banking facilities by the 2<sup>nd</sup> Defendant which securities were secured vide a charge of Transmara/Moyoi/1489.
  - (ii) That upon default of payment of the advance banking facilities, the 2<sup>nd</sup> Respondent exercised its statutory right of sale and the

3<sup>rd</sup> Respondent acquire interests upon purchase of the same and the suit property is now registered in his name.

4. The 3<sup>rd</sup> Respondent deponed on the existence of two previous suits filed by the Applicant to challenge the exercise of the statutory power of sale, by the 2<sup>nd</sup> Respondent and annexed copies of the Rulings in respect of the previous suits being (Narok ELC No. E002/2020) and Kilgoris ELC No. 1 of 2021.
5. That despite the dismissal of the two previous suits the Applicant fled yet another suit being Kilgoris CMC ELC 019/2025 and the said suit was struck out for being *Resjudicata* and being time barred which striking out provoked the Appeal herein and this application seeking to set aside the said Ruling the same cannot be granted at an interlocutory stage as that would be to determine the Appeal at an interlocutory stage, that further in so far as Kilgoris ELC No.002 of 2023, Kilgoris ELC 001 of 2023 and Kilgoris ELC No. E001 of 2021 are not subject of this appeal, the court lacks jurisdiction to handle the said disputes, and the two suits having been determined the Appellant is only able to seek either an appeal and/or a review.
6. That the ingredients of say of proceedings have not been satisfied.
7. The Application was canvassed by way of written submissions  
Applicant's Submissions
8. It was the Applicants submissions that he has satisfied the threshold for grant of stay of execution under order 42 Rule 6(2) of the civil procedure Rules.
9. That Article 165(6) and (7) of the Constitution of Kenya donate powers to the High court to call for the records and issues appropriate directions, reliance was placed on the decision in Kenya National Examination Council Vs. Republic exparte Geoffrey Gathenji Njoroge and Kenya Shell Ltd Vs. Benjamin Karuga Kibiru (1986) 410. On the strength of the above the Appellant seeks a stay of execution as well as stay of proceedings; and urges the court to allow the application.

### **3rd Respondent's Submissions**

10. It is the 3<sup>rd</sup> Respondents submissions that the orders of setting aside of the ruling dated 3<sup>rd</sup> of April 2025 cannot be issued at interlocutory stage. The Record of Appeal and directions having not been issued it is not possible to issue it is not possible to issue the orders of setting aside as sought in the Application.
11. The Respondent further submits that Kilgoris ELC No. E002/2023 having been dismissed for want of prosecution could not be possibly stayed. The other proceedings were independent proceedings in respect of which no stay of proceedings could be sought in this application.

### **Issues for Determination**

12. The sole issue for determination is whether the application is merited or not, and in deciding this issue the court shall consider whether the orders sought are capable of being issued in this application.

### **Analysis and Determination**

13. The submissions of the counsel for the Applicant seem not to be in tandem with the prayers sought in the application.
14. Whereas the prayers sought in the Application are for setting aside of the Ruling dated 30<sup>th</sup> of April 2025, the submissions were on a stay of execution under Order 42 Rule 6.
15. Considering that parties are bound by their pleadings, the true import of the application subject of this Ruling, is that it seeks to set aside the Ruling dated 30.04.2025 and does not seek stay of

execution. The court shall consider both possibilities as sought in the application and for academic purposes as sought in the submissions.

16. Setting aside of the Ruling is only possible once the Appeal is heard, and found meritorious, in the instance application, the relief of setting aside as sought in the application will be tantamount to issuance of final orders at the interlocutory stage, hence the prayer as sought cannot be issued.
17. In the unlikely event, that the Applicant meant to seek a stay of execution order as opposed to a setting aside order, this too cannot issue, as the Appeal is against a dismissal order, a dismissal order being a negative order cannot be stayed.
18. On the second prayer of stay of proceedings under the courts of supervisory powers, in relation to ELC No. E002 of 2023 ELC E001 of 2023. The court notes from the annextures exhibited by the 3<sup>rd</sup> Respondent.
19. Annexure BAG 6a is a Ruling in respect of Narok Civil Case No. 11 of 2019 while annexure BAG 6b is an order in respect of Kilgoris HCCC No. 01 of 2021 which case was dismissed for non-attendance. It follows that there is nothing to stay in the matters, more so because Narok HCCC No. E01/2021 was already dismissed.
20. The Applicant seeks stay of proceedings in Kilgoris ELC No. E002/2023 and Kilgoris ELC No. E001 of 2021, which were finalized with a dismissal in E002/2023 and a Judgment delivered in E001/2021.
21. The above two matters were filed differently and having been finalized, the same cannot equal be stayed. The Applicant could only seek is stay of execution in respect of costs in the said files before this court or before the Court of Appeal if the parties have preferred an appeal and not in this matter a fact that the learned counsel ought to know.
22. From the above analysis the prayer for setting aside is definitely untenable at the interlocutory stage, while the prayer for stay of

proceedings in matters that have been concluded is equally not to have sought for stay of execution before the court of Appeal if he was dissatisfied with the decisions as rendered.

23. Since both cases ELC No. E001/2021 and ELC E002/2023 were filed before the ELC Court I cannot possible have residual supervisory powers over matters that were handled by a Judge of concurrent jurisdiction as the Applicant wrongly believes. Of course, I have supervisory jurisdiction over the subordinate courts in ELC Matters. The matters sought to be stayed were wrongly said to be before the subordinate court but were actually filed, and determined by the ELC, I certainly do not have the supervisory jurisdictions, on courts of concurrent jurisdiction.
24. In light of the foregoing, the inevitable and inevitable conclusion the court reaches, is that the Application before court lacks merit and the same is hereby dismissed; with costs to the 3<sup>rd</sup> Respondents. The other 3 Respondents having not taken part in the application. In terms of the main Appeal the Appellant is directed to file and serve the Record of Appeal within 60 days.
25. A mention date for 21<sup>st</sup> January 2025 to confirm filing of the record of Appeal.
26. The court registry to facilitate typing of proceedings within 45 days from today.

Dated at Kilgoris this 20<sup>th</sup> day of November, 2025.

Hon. M.N Mwanyale  
Judge

**In the presence of**

CA - Emmanuel/Sylvia/Sandra

Ms. Mireri for the Applicant  
Mr. Langat for the 3<sup>rd</sup> Respondent