

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC APPEAL NO. E034 OF 2025

**SIMON KAMANU APPELLANT/
APPLICANT**

VERSUS

STANLEY MAINA WAWERU RESPONDENT

RULING

1. The Applicant filed a Notice of Motion application dated 11th April 2025 seeking the following Orders:

1. *Spent*

2. *Spent*

3. *THAT the honourable Court be pleased to grant an Order of stay of execution of the judgment delivered on 13th March 2025 in MCELC No. 41 of 2019 (Consolidated with MCELC No. 42 of 2019) at Thika and any other order that may have been issued pursuant thereto pending hearing and determination of this Application.*

4. *THAT the honourable court be pleased to grant an Order of stay of execution of the judgment delivered on 13th March 2025 in MCELC No. 41 of 2019 (Consolidated with MCELC No. 42 of 2019) at Thika and any other order that may have been issued pursuant thereto pending hearing and determination of the appeal.*

5. *THAT the costs of this Application be provided for.*

2. The application is supported by the affidavit of Simon Kamanu, sworn on even date.
3. The Applicant approaches this Court seeking the shelter of its supervisory authority, urging that the judgment of the Honourable I. F. Koome (Senior Resident Magistrate) in MCELC No. 41 of 2019 (Consolidated with MCELC No. 42 of 2019) at Thika should not take effect until the lawfulness of that decision is fully and fairly tested.
4. The application rests on two pillars. First, the applicant contends that the learned Magistrate overlooked the Applicant's defence, testimony and submissions that Title LR No. 8226/14 had been nullified by the High Court in Civil Case No. 1536/2013 rendering any transaction derived therefrom null and void and incapable of completion and/ or enforcement.
5. Second, the Applicant asserts that the impugned judgment orders for the transfer of land parcels LR No. 8226/14/16 and 8226/14/5, yet those parcels are non-existent and incapable of enforcement.
6. Opposition to the application was mounted through the replying affidavit of Stanley Maina Waweru sworn on 3rd June 2025 which challenges the reliefs sought.
7. The application was canvassed by written submissions duly filed by both parties.

Issues

8. Having perused the application, the replying affidavit in opposition, and the parties' written submissions the following issues emerge for determination:

i. Whether the Appellant/ Applicant has demonstrated an arguable appeal

ii. Whether the Appellant has satisfied the conditions for the grant of Stay of Execution under Order 42 Rule 6 of the Civil Procedure Rules

Analysis and Determination

9. The first question for determination is whether the Appellant/ Applicant has demonstrated an arguable appeal.

10. I am mindful that an arguable appeal need not be one certain of success, but must disclose grounds that are *bona fide* and capable of sustaining further judicial scrutiny.

11. In the present case, the Appellant contends that the learned Magistrate committed errors of law, overlooked critical evidence and submissions, and failed to interrogate the foundation of the Respondent's claim, notably the absence of an abstract title to establish the existence of the land parcels in question.

12. The Appellant further undertakes to refund the sum of Kshs.600,000 to the Respondent ordered by the trial court, demonstrating readiness to comply with any eventual decree.

13. The law exacts no guarantee of victory; it requires merely that the appeal rest upon *bona fide* grounds, and not descend into a futile exercise of stubbornness or ritual formality.
14. An arguable appeal is one that calls for the court's reasoned attention, not its indulgence. See ***Mwakima v Kenya Industrial Estates Ltd & 2 others* [2023] KEELC 18217 (KLR)**.
15. The Court of Appeal extensively defined an 'arguable appeal' in ***Attorney General v Matindi & 55 others* [2023] KECA 1475 (KLR)** in the following terms:

“What then, is an arguable appeal? This Court has defined an arguable appeal as one that raises even a single bona fide issue that deserves full consideration by the Court. It is an appeal that is not frivolous. It is not necessary to raise a multiplicity of issues. A single genuine issue will suffice. And an arguable appeal is not necessarily one that must succeed when the appeal is heard...”

In determining whether or not the applicant has established an arguable appeal ... the applicant needs only to demonstrate that prima facie, the appeal is not frivolous.”

16. Measured against this standard, the Applicant's grounds cannot be dismissed as trivial.
17. The Applicant challenges the trial court's treatment of the parcel of land know as Title LR No. 8226/14 in light of the decision by the High

Court in Civil Case No. 1536/2013 which allegedly nullified the root of title.

18. The Appellant also contends that its evidence and submissions were overlooked and that the respondent failed to exhibit an abstract of title or any official record demonstrating the existence of the specific parcels ordered for transfer. These points raise legitimate questions of law and fact that merit appellate interrogation.
19. Coupled with the Appellant's readiness to provide security for the due performance of any decree that may ultimately be binding, the Court is satisfied that the Appellant has established the existence of an arguable appeal.
20. The second issue is whether the Applicant has satisfied the statutory conditions for a stay of execution.
21. **Order 42, Rule 6** of the Civil Procedure Rules provides that a stay of execution may be granted where the appeal is arguable and enforcement would occasion substantial loss or injustice. It provides as follows:

“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.”

22. These provisions delineate the threshold for the grant of a stay: the Applicant must demonstrate both a real risk of substantial loss and readiness to provide security, while ensuring that the application is timely and bona fide.
23. The Court must therefore examine whether the Appellant’s contentions meet these criteria, having regard to the nature of the appeal and the interests of justice.
24. These principles are firmly entrenched in Kenyan jurisprudence. In ***Vision Afrika Housing Co-operative Society Limited & another v Gikonyo & another* [2025] KEELC 4766 (KLR)**, the court held that the conditions for a stay include (i) the presence of a

substantive issue for appeal; (ii) absence of undue delay; and (iii) provision of security to protect the Respondent.

25. These factors are not merely formalities but guide the court's discretionary power. See ***Njibwakale v Kisaka*** [2025] KEELC 489 (KLR).

26. Further, in ***Chepawoy v Yano & 2 others*** [2025] KEELC 3088 (KLR) the court held that:

“An order of stay of execution also ensures that if the appeal is successful, it is not rendered nugatory.”

27. This principle captures the very purpose of a stay: preserving both the appeal's effectiveness and the Appellant's rights. See ***RWW v EKW*** [2019] eKLR.

28. The Applicant intends to challenge the judgment of the Honourable I. F. Koome (SRM) in MCELC No. 41 of 2019 (Consolidated with MCELC No. 42 of 2019) at Thika.

29. I have taken time to peruse the Memorandum of Appeal filed on 1st April 2025. It is the Applicant's contention that the judgment was effectively flawed in fact and in law and incapable of enforcement.

30. In the present matter, the Applicant has demonstrated a real and substantial risk of irreparable harm, especially given the disputed or potentially non-existent status of the land parcels in issue.

31. Moreover, the Applicant has undertaken to provide adequate security to protect the Respondent's interests. Learned counsel for the Applicant has placed reliance on the decision in ***Focin Motorcycle Co. Limited vs Ann Wambui Wangui & another*** [2018] eKLR.

32. Additionally, the Applicant has acted expeditiously in making this application. The impugned judgment was delivered on 13th March 2025 and the Applicant promptly filed the Memorandum of Appeal on 1st April 2025 and thereafter the instant application on 11th April 2025.

33. In view of the foregoing, having weighed all the considerations, I am satisfied that the Applicant has satisfied the statutory conditions for grant the grant of a stay of execution.

32. Accordingly, the application dated 11th April 2025 is allowed on the following conditions:

i. The parties shall maintain the status quo obtaining as at the date of this ruling, with no dealings, sale, transfers, construction, or alterations relating to the suit property, LR No. 8226/14 until the appeal is heard and determined.

ii. The Applicant is hereby ordered to deposit Ksh. 300,000/- as security for costs in court within 21 days of this ruling.

iii. Failure by the Applicant to abide by conditions (i) and (ii) within the fixed time lines will lead to an automatic lapse of the stay of execution.

iv. Costs to abide the Appeal.

Dated, signed and delivered virtually at Thika this 19th day of November 2025

.....
J. M. ONYANGO
JUDGE

In the presence of:

1. Ms Mwangi for the Appellant/Applicant
2. Ms Nasimiyu for the Respondent

Court Assistant: Hinga