

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC APPEAL NO E046 OF 2024

NATHANIEL MUTURI.....APPELLANT/APPLICANT

VERSUS

PAUL THIGA NDEGWA.....
.....RESPONDENT

RULING

1. This ruling is in respect of the Appellant/Applicant’s Notice of Motion application dated 30th September, 2025 seeking the following orders:
 - a) *Spent*
 - b) *Spent*
 - c) *THAT the Honourable Court be pleased to grant a stay of execution of the judgment rendered in Nakuru MCELC 88 of 2020: Paul Thiga Ndegwa vs Nathaniel Muturi, together with the consequent decree or orders, pending the hearing and final determination of this appeal.*
 - d) *THAT the Honourable court be pleased to grant such further orders as may be necessary, just and expedient.*
 - e) *THAT costs in respect of this application be provided for.*

2. The application is supported by the annexed affidavit of Nathaniel Muturi, the Appellant/Applicant sworn on 30th September, 2025, where he deponed that he has filed a Memorandum of Appeal having been dissatisfied with the outcome in Nakuru Magistrates Court ELC Case No 88B of 2020. It was his disposition that the Respondent’s counsel has

written to him a letter demanding the payment of Kshs. 127, 455/= while the Appeal is pending.

3. The Applicant urged the court to grant the order of stay of execution as prayed in the application.
4. Githui John, the Respondent's counsel, filed a Replying Affidavit sworn on 3rd October, 2025, and deponed that the only aspect of the decree that can be stayed is the decree on the taxed costs and the application does not meet any of the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules. Counsel deponed that the Memorandum of Appeal was filed on 29th September, 2024, while this application was filed on 30th September, 2025. He further stated that there is inordinate delay in filing the application being more than a year after filing the Memorandum of Appeal.
5. It was the Respondent's counsel's deposition that the Applicant will not suffer any substantial loss in paying taxed costs as the same is monetary in nature. Counsel urged the court to order the applicant to deposit the sum of Ksh 127, 455/= in a joint account pending the hearing of the appeal if the court were to find merit in the application.

APPLICANT'S SUBMISSIONS

6. Mr. Omwanza, counsel for the Applicant filed submissions dated 15th October, 2025, and identified the following issues for determination:

a) Whether the Appellant/Applicant deserves stay of execution orders in the circumstances?

b) Whether it is in the interest of justice to maintain the suit properties pending the determination of the instant appeal?

c) Whether the appeal will be rendered nugatory if the orders sought are not granted?

7. Counsel submitted that the Applicant stands to suffer irreparable harm if the actions of the Respondent continue, and that the Appellant had filed a similar application upon lodging the appeal on 2nd August, 2024, but the same was withdrawn on the ground that the trial court was handling a similar application at the time.
8. Counsel submitted that later the trial court dismissed the application vide a ruling dated 9th October, 2024, but the *status quo* obtaining had been maintained, until the Respondent served a notice to show cause on the costs of suit. Further that the Respondent continued with construction at the suit premises and urged the court to allow the application as prayed.

RESPONDENT'S SUBMISSIONS

9. Mr. Machoka, counsel for the Respondent, informed the court on 28th October, 2025 that he had filed submissions, but the court record shows that the submissions filed are dated 7th October, 2025, which relate to the main appeal and address the issues raised in the grounds of appeal and the Appellant's submissions to the Appeal.

ANALYSIS AND DETERMINATION

10. The issue for determination is whether the Applicant has met the threshold for the grant of stay of execution orders as provided for under Order 42 Rule 6 of the Civil Procedure Rules which guides the court on whether to grant a stay of execution or not.
11. The Applicant filed a similar application dated 2nd August 2024, whereby the court gave directions that the same be served within 7 days, and the Respondent was to file a response within 7 days with a mention date on 14th October 2024. The Applicant later withdrew the Application on the grounds that the trial court was already dealing with an application for stay of execution.
12. The Applicant filed this Application on 30th September 2025 after the Application in the lower court had been dismissed. The Applicant filed a Memorandum of Appeal on 24th September 2024, which shows that the application was not filed timeously. The Applicant was gambling by pursuing stay of execution in parallel processes. The gamble did not pay off. The Applicant withdrew the application in this court to pursue the one in the trial court, which did not bear fruit as it was dismissed.
13. In the case of **Jaber Mohsen Ali & another v Priscillah Boit & another [2014]** the court held as follows:

“The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”

14. There was an unreasonable delay in filing this application and the Applicant has not demonstrated the substantial loss that he will suffer if the application is not granted. The Applicant claims that it would be unfair if he is made to pay the taxed costs of Ksh 127, 455/=. The decree is monetary in nature and if the Appeal succeeds, then the Respondent can be ordered to refund the amount. Courts rarely grant a stay of execution of a money decree, but that is not to say that they will never grant a stay of execution of a money decree. Each case will depend on the circumstances at hand.

15. I have considered the application and submissions by counsel and find that the Applicant has not satisfied the conditions set out in Order 42 rule 6 of the Civil Procedure Rules, as there was unreasonable delay in filing the application. The Applicant has also not demonstrated that he will suffer any substantial loss if he pays the decretal sum. The Application is therefore dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE