



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC APPEAL NO. E159 OF 2024

JAMES WAMBUGU NDIANGUI.....
.....APPELLANT

VERSUS

LEE MWATHI KIMANI.....
.....RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 14th October, 2024 brought under Sections 1A, 1B, 3A and 63 of the Civil Procedure Act, Order 42 Rule 6(1), (2) and Order 51 Rule 1 of the Civil Procedure Rules and Section 68 of the Land Registration Act in which the Applicant seeks the following orders:-

- a) Spent.***
- b) Spent.***
- c) Spent.***
- d) Spent.***

e) That this Honourable court be pleased to issue an order of stay of execution of the Magistrate's Court judgment delivered on 27th September 2024 pending the hearing and determination of the appeal.

f) THAT this Honourable Court be pleased to issue an inhibition order inhibiting the registration of any disposition in the register of the parcel of land known as NAIROBI/BLOCK 97/482, the suit property herein, pending the hearing and determination of the Appeal.

g) THAT this Honourable Court be pleased to grant such further or other relief as it may deem fit to grant.

h) THAT the costs of this application be in the appeal

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of James Wambugu Ndiangui sworn on even date.

THE APPLICANTS' CASE

3. The Applicant averred that he filed an appeal challenging the entire judgment and decree issued on 27th September, 2024. He asserts that his appeal is arguable and has a high chance of success.

4. The Applicant is apprehensive that his title might be cancelled if a stay of execution is not granted, which would render the appeal nugatory. Additionally, he stated the Respondent might sell or otherwise deal with the suit property in a way that would prejudice him.

THE RESPONDENT'S CASE

5. The Respondent opposed the application through the grounds of opposition dated 10th March 2025.
6. According to the Respondent, the application is defective and an abuse of the court process. He further argued that the Applicant is guilty of laches and has not provided any security for the due performance of the decree. He asserted that the application does not meet the threshold for the grant of the orders sought.
7. The application was canvassed by way of written submissions.

THE APPLICANT'S SUBMISSIONS

8. The Applicant filed his submissions dated 14th April 2025
9. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:-
 - a) *Whether this Honourable Court should grant an order of stay pending the hearing and determination of the appeal?*
 - b) *Whether an inhibition order ought to issue pending the hearing and determination of the application and appeal?*

10. Regarding the first issue, Counsel submitted that the Applicant has satisfied the conditions for the grant of a stay of execution pending the hearing and determination of the appeal.
11. On the first condition, Counsel submitted that the Applicant would suffer substantial loss if a stay is not granted, as his title would be cancelled and lead to the rectification of the register to his detriment. Consequently, the appeal will be rendered an academic exercise. To buttress this argument, reliance was placed on the case of **Mbola (Appealing through his recognized agents John Ndambuki Kitenge v Masil (Environment and Land Appeal E014 of (2022) (2024) KEELC 1634 (KLR) (13 March)(Ruling and Kingáangi & 2 others v Kingáangi & 3 others (Environment and Land Appeal E012 of 2023)(2024) KEELC 3329 (KLR) (24 April 2024) (Ruling).**
12. On the second condition, Counsel submitted that the application was filed without unreasonable delay.
13. Regarding security, Counsel submitted that the applicant is willing to abide by any conditions imposed by the court. To support this position, reliance was placed on the case of **James Wangalwa & Another v Agnes Naliaka Cheseto (2012) KEHC 1094 (KLR).**
14. Counsel urged the court to issue an order of inhibition because the Applicant has demonstrated that he has an arguable appeal. It was submitted that the suit property

might be sold if an injunction is not granted, rendering the appeal nugatory. To support this claim, reliance was placed on **Section 68(1) of the Land Registration Act** and on the case of **M'murithi & Another v Kigia (Environment & Land Case E014 of 2022) (2023) KEELC 17760 (KLR) (7 June 2023) (Ruling)**.

15. In conclusion, Counsel urged the court to grant a stay of execution pending the hearing and determination of the Appeal.

THE RESPONDENTS SUBMISSIONS

16. The Respondent filed his submissions dated 24th June 2025.
17. On his behalf, Counsel submitted that the Applicant has not satisfied the conditions for the grant of stay of execution pending appeal outlined in Order 45 Rule 6 of the Civil Procedure Rules. Counsel further submitted that the Applicant has not demonstrated the substantial loss that he is likely to suffer if a stay is not granted.
18. Counsel further submitted that the Applicant has not offered any security for the due performance of the decree. In conclusion, Counsel urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

19. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Applicant is entitled to the orders.

20. The Applicant is seeking a stay of execution pending the hearing and determination of his appeal. He contended that he would suffer substantial loss if a stay of execution is not granted because his title would be cancelled and the register would be rectified to his detriment. He further argued that his appeal has high chances of success and would be rendered nugatory.
21. The Respondent, on the other hand, argued that the Applicant has not demonstrated that he would suffer substantial loss if a stay is not granted.
22. By a Plaint dated 28th October 2013, the Applicant sought the following orders:-
- 1). A permanent and mandatory injunction be issued against the Defendant, whether by himself, his servant, and/or any person acting through him, from trespassing into and/or interfering with the Plaintiff's quiet, peaceful possession of the parcel of land known as Nairobi/Block 97/482 at Tassia Estate, Nairobi.**
 - 2). Eviction orders against the Defendant.**
 - 3) Costs of this suit**
23. Upon hearing the parties, the trial court delivered its judgment on 27th September 2024, and dismissed the Plaintiff's suit with costs. This Court notes that the order sought to be stayed is a decision that dismissed the suit. It is therefore a negative order.

24. 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. An execution can only lie in respect of costs.....”

25. 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.”

26. A negative order is incapable of being stayed. Accordingly, there is nothing to stay in the present application.

27. The Applicant is apprehensive that the Respondent might dispose of the suit property pending the hearing and determination of the appeal. He is also apprehensive that his title might be cancelled, leading to the rectification of the register to his detriment. In this regard, he urged the court to issue an order of inhibition.

28. Section 68 of the Land Registration Act provides as follows:-

1) The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time or until the occurrence of a particular event or generally until a further order, the registration of any dealing with any land, lease or charge.

2) A copy of the inhibition under the seal of the court with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.

3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.

29. The conditions necessary for the grant of an inhibition were set out in the case of **Japhet Kaimenyi M’Ndutho v M’ndatho M’Mbwiria (2012)eKLR** as follows:-

a) That the suit property is at the risk of being disposed of, alienated, or transferred to the detriment of the Applicant unless preservative orders of inhibition are issued.

b) That the refusal to grant orders of inhibition would render the Applicant’s suit nugatory.

c) That the Applicant has an arguable case

30. In the matter at hand, the court is of the opinion that the sale, lease, or charge of the suit property might prejudice the Appellant’s interest and render the Appeal nugatory. In light

of the foregoing, I find that an order of inhibition will preserve the suit property. In the end, the application dated 14th October, 2024 partially succeeds in the following terms:-

a) An order of inhibition is hereby issued, inhibiting registration of any dealing with NAIROBI/BLOCK 482 pending the hearing and determination of the Appeal.

b) The Appellant is directed to file and serve the record of appeal within 14 days from the date hereof.

.....
HON. T. MURIGI
JUDGE

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF NOVEMBER, 2025.

IN THE PRESENCE OF: -

Ms Kokello holding brief for Nyakwana for the Appellant.