



**Otara v Mukuriah & 4 others (Environment and Land Case
E031 of 2022) [2025] KEELC 8162 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8162 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E031 OF 2022
MAO ODENY, J
NOVEMBER 26, 2025**

BETWEEN

AMOS. M OTARA PLAINTIFF

AND

BONIFACE MUNYINYI MUKURIAH RESPONDENT

AND

MINISTRY OF DEVOLUTION 1ST DEFENDANT

MINISTRY OF LANDS AND PHYSICAL PLANNING 2ND DEFENDANT

COUNTY GOVERNMENT OF NAKURU 3RD DEFENDANT

DISTRICT LAND REGISTRAR, NAKURU 4TH DEFENDANT

RULING

1. This ruling is in respect of the 1st Defendant/Applicant's Notice of Motion application dated 11th July, 2025, seeking the following orders:
V
 - a. Spent
 - b. Spent
 - c. That pending hearing and determination of the appeal preferred before the Court of Appeal this honorable court be pleased to stay execution of the judgement entered herein.
 - d. That costs be provided for.



2. The application is supported by the annexed affidavit of Boniface Munyinyi Mukuria, the 1st Defendant/Applicant, sworn on 11th July, 2025, where he deponed that judgment was delivered in this suit whereby the court ordered a refund of the purchase price of Ksh.17,440,911/= to the Plaintiff. He further deponed that he has preferred an appeal against the judgment and if stay is not granted, he will be highly prejudiced considering that he is also an innocent purchaser for value without notice. He also stated that he is ready and willing to abide by the conditions given by the court and the application has been brought without delay.
3. Mr. Amos. O. Otara, the Plaintiff/ Respondent filed a Replying Affidavit sworn on 22nd September, 2025, and deponed that the application is not supported by any evidence as the documents, like the memorandum of Appeal have not been attached and placed before the court. He further deponed that he has a right to enjoy the fruits of his judgment, and the applicant's recourse is with the person he purchased the property from.
4. The Plaintiff deponed that in the event the court is inclined to allow the application then it should be on condition that the applicant deposits the entire decretal sum and costs in a joint interest earning account in his name and that of the advocate. He urged the court to dismiss the application with costs.

1ST DEFENDANT / APPLICANT'S SUBMISSIONS

5. Mr. Langat, counsel for the Applicant filed submissions dated 5th September 2025, and identified the following issues for determination:
 - a. Whether the Applicant has met the conditions requisite for the granting of stay of execution pending the hearing and determination of the preferred appeal?
 - b. Who shall bear the cost of this application?
6. Counsel submitted that execution of the decretal sum, which is substantial, is imminent and there is a genuine apprehension that the 1st Respondent may be unable to reimburse the sums if the appeal succeeds. Counsel submitted that in the instant case, the court in its judgment dated 2nd July, 2025, ordered that the Applicant pay the Respondent Ksh.17,440,911.10 plus interest within 90 days.
7. Counsel relied on Order 42 Rule 6(2) of the Civil Procedure Rules and the cases of Sam-Con Limited vs National Bank of Kenya Limited & 2 others [2023] KEHC 26502 (KLR) and Desbro (Kenya) Limited vs General Printers Limited: NCBA Bank Kenya PLC & another (Objectors) [2021] eKLR, and submitted that the application has been filed without unreasonable delay as the court rendered the judgment on 2nd July, 2025, and the application was filed on 11th July, 2025. Counsel further submitted that the applicant is willing to deposit security before the court and urged the court to determine fair and reasonable terms with costs in the cause. Mr. Langat relied on the cases of Mwanza vs Mulinge [2024] KEHC 1847 (KLR) and Gulf African Bank Limited vs Signon Corporation Limited & 7 others [2025] KEHC 1159 (KLR) and urged the court to allow the application as prayed.

PLAINTIFF/ RESPONDENT'S SUBMISSIONS

8. Mr. Ratemo, counsel for the Plaintiff/Respondent filed submissions dated 22nd September, 2025, and identified the issue for determination as whether the execution of the judgment and decree should be stayed pending the hearing and determination of the appeal lodged at the Court of Appeal.



9. Counsel submitted that in the absence of evidence of substantial loss to the applicant either in the manner of paying the money awarded which would cause difficulty to the applicant himself or because he would lose his money if payment is made since the plaintiff will be unable to repay the decretal sum plus costs, the applicant has not proved that he will suffer substantial loss.
10. Counsel relied on Order 42 Rule 6 of the Civil Procedure Rules and the cases of Jamii Bora Bank Limited & another vs Samuel Wambugu Ndirangu, Shell Ltd vs Kibiru and Another [1986] KLR 410, Jessikay Enterprises Ltd vs George Kahoto Muiruri [2022] eKLR and National Industrial Credit Bank Ltd vs Aquinas Francis Wasike & Another (2006) eKLR.
11. Counsel submitted that the judgment was delivered on 2nd July, 2025 and the instant application was brought on 14th July, 2025 hence it was brought timeously, and cited the case of John Kamau Waweru vs Joseph Muriu Waitthaka [2017] eKLR. Counsel submitted that the Plaintiff is the holder of a money decree regularly obtained from this court after a full trial and urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

12. The issue for determination is whether the 1st Defendant/Applicant has met the threshold for the grant of stay of execution pending appeal as provided for under Order 42 Rule 6 of the Civil Procedure Rules, which provides as follows:
 - “(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.”
13. On whether the application has been filed without any unreasonable delay, the court rendered the judgment on 2nd July, 2025, and the application was filed on 11th July, 2025. This court finds that there was no unreasonable delay in filing the application.
14. The Applicant’s case that he is apprehensive that if he were to pay the decreed amount to the Respondent, he will have great difficulties in recovering the money from the Respondent should the Appeal in the Court of Appeal succeed. The Applicant has not substantiated any substantial loss that he would suffer if the order is not granted, similarly, he has not demonstrated that the Respondent is a man of straw with unknown assets which he can use to recover the amount decreed.
15. 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, and should the Applicant succeed in demonstrating the extreme difficulty in recovering the decretal sum from the Respondent in the event the appeal succeeds, the Applicant will have succeeded in showing that he stands to suffer substantial loss.
16. The Applicant did not raise the issue whether the Respondent has no known assets whereby he will be unable to refund the decretal sum should the appeal succeed. If he had raised this, then it would have been prudent for the Respondent to show that he has assets, which can cover the refund in case the appeal succeeds.



17. In the case of National Industrial Credit Bank Ltd Vs Aquinas Francis Wasike & Another (2006) eKLR the Court of Appeal held thus:

“Once an Applicant expresses a reasonable fact that a Respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the Respondent to show whatever resources he has since that is a matter which is peculiarly within his knowledge.”

18. The burden did not shift to the Respondent, as the Applicant did not raise the issue in this case.

19. In the case of China City Construction Company Limited & another versus Karisa (Suing as the Administrator and Legal Representative of the Estate of the Late Didlora Mwaka Mwangala) (Civil Appeal 105 of 2023) [2024] KEHC 3323 (KLR) (8 April 2024) (Ruling), the court had this to say on substantial loss:

“On substantial loss, it was the Appellant’s allegation that the decretal amount is substantial, if paid to the Respondent and the appeal succeeds, they may not be able to recover the same. On this principle, Platt, Ag. JA (as he then was) in Kenya Shell Limited v Kibiru [1986] KLR 410, at page 416 expressed himself as follows:

“It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money”.

On his part Gachuhi, Ag.JA (as he then was) at 417 held:

“It is not sufficient by merely stating that the sum of Kshs 20,380.00 is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement.”

20. As was observed in the above case, it is not sufficient to state that the sum of 17million is a lot of money and the applicant will suffer substantial loss if the money is paid. The sort of loss must be demonstrated.
21. The court has to balance the rights of a successful litigant and the rights of the Appellant to appeal to a higher court. I find that the application lacks merit and is therefore dismissed with costs to the respondent

DATED, SIGNED AND DELIVERED AT NAKURU THIS 26TH DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE

