



**Ririani v Adan & another (Environment and Land Case Civil Suit
189 of 2019) [2025] KEELC 8108 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8108 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 189 OF 2019
OA ANGOTE, J
NOVEMBER 20, 2025**

BETWEEN

JANE WANJIRU RIRIANI PLAINTIFF

AND

ABDINUR HASSAN ADAN 1ST DEFENDANT

DIAMOND TRUST BANK 2ND DEFENDANT

RULING

1. Before this court for determination is the Plaintiff/Applicant's Notice of Motion application dated 14th April, 2025, brought pursuant to the provisions of Articles 159(1), (2), (3) of *the Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6, and Order 51 Rule 1 of the Civil Procedure Rules, and Section 10 of the *Judicature Act* Rules seeking the following reliefs:
 - i. There be an Order of Stay of Execution of the Judgment and Decree delivered on the 20th day of March, 2025 by the Court (Hon Justice O.A Angote) pending the hearing and determination of the Appeal in the Court of Appeal.
 - ii. Any other order deemed just and proper in the circumstances.
2. The Motion is supported by the Affidavit of Jane Wanjiru Ririani, the Plaintiff/Applicant, sworn on an even date. She deponed that she instituted this suit by a Plaint dated 6th June 2019 seeking ownership of the property known as I.R. No. 29542 / L.R. No. 209/8294/119, situated in Akiba United Estate, South C, Nairobi County (hereinafter suit property).
3. Vide its judgment of 20th March, 2025, the court dismissed her suit, finding that the legal charge dated 17th June 2016 and registered on 19th September 2016 over the suit property was valid, legal, and enforceable against the Chargor.



4. Ms. Ririani averred that while she holds great respect for the court's decision, she intends to exercise her constitutional right of appeal and that she has lodged a Notice of Appeal against the entire aforesaid judgment and decree and is awaiting certified copies thereof as well as of the proceedings from the Deputy Registrar to facilitate preparation of the Record of Appeal.
5. According to the Applicant, the 1st Defendant/Respondent is the registered proprietor and chargor of the suit property; that he had sold the property to her, received the full purchase price, and granted her vacant possession and that despite the sale, he fraudulently proceeded to charge the same property to the 2nd Defendant/Respondent bank, the property having previously been charged to Co-operative Bank before the 2nd Respondent, Diamond Trust Bank, took over the facility.
6. The Applicant contends that the subsequent charge in favour of the 2nd Respondent was illegal, null and void, having been procured through fraud, a fact she maintains was conceded to by both parties and which forms one of the principal grounds of her intended appeal.
7. She further deponed that her draft Memorandum of Appeal raises weighty and arguable issues deserving re-examination by the Appellate court. She urged that unless the orders sought for stay of execution are granted, her appeal will be rendered nugatory and an exercise in futility.
8. The 2nd Defendant/Respondent, through its Legal Manager, Faith Ndonga, swore a Replying Affidavit on 24th June 2025. She deponed that the Plaintiff had filed a Plaint dated 6th June 2019 seeking, inter alia, a declaration that she is the rightful owner of I.R. No. 29542 / L.R. No. 209/8294/119, Nairobi, a declaration that the charge registered against the said property was illegal and fraudulent and ought to be cancelled, and a permanent injunction restraining the Respondents from selling, exercising the statutory power of sale, or in any way interfering with the suit property.
9. Ms. Ndonga deponed that the matter was duly heard and determined, and by a judgment dated 20th March 2025, the court dismissed the Plaintiff's/Applicant's suit with costs and that the court held that the Plaintiff's acquisition of the charged property was null and void, having been undertaken without obtaining the requisite consent of the previous chargee, Co-operative Bank of Kenya Limited.
10. She further deponed that the court, guided by the decision in *Co-operative Bank of Kenya Limited v Patrick Kang'ethe Njuguna & 5 Others* [2017] eKLR, found that it lacked jurisdiction to adjudicate issues relating to the 2nd Defendant's exercise of its statutory power of sale, as this would require an examination of the chargor's loan accounts and a review of statutory notices, matters properly falling within the jurisdiction of the High Court.
11. According to Ms. Ndonga, having held that it lacked jurisdiction to restrain the 2nd Defendant from exercising its statutory power of sale, the court equally cannot now issue the stay orders sought. She added that the Plaintiff has not demonstrated that she stands to suffer substantial loss, since the 2nd Defendant is a reputable Tier 1 bank with over 130 branches across East Africa and assets worth billions of shillings, and is well capable of compensating any proven loss under Section 99 of the [Land Act](#).
12. Ms. Ndonga urged that the Motion is devoid of merit, misconceived, and intended solely to frustrate the 2nd Defendant's legitimate effort to realize its security. The parties filed submissions and a list of authorities which I have considered.

Analysis and Determination

13. Having considered the Motion, Affidavits and submissions, the issues that arise for determination are:
 - i. Whether the court has jurisdiction to entertain this Motion?



- ii. Whether the Applicant has satisfactorily demonstrated the conditions warranting the grant of stay of execution pending Appeal?
14. It is trite that jurisdiction is everything. This position was succinctly captured by Nyarangi, J.A. in Owners of Motor Vessel ‘Lillian S’ vs Caltex Oil (Kenya) Limited [1989] KLR 1 thus:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”
15. Elaborating on the same, the Supreme Court in In the Matter of the Interim Independent Electoral Commission (Applicant) (Constitutional Application 2 of 2011) [2011] KESC 1 (KLR) (20 December 2011) (Ruling) stated:

“Assumption of jurisdiction by courts in Kenya is a subject regulated by *the Constitution*, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.” The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by *the Constitution*.”
16. The 2nd Defendant argues that this court has no jurisdiction to grant the stay orders sought, pointing out that in its judgment, the court had already held that it lacked jurisdiction to restrain the 2nd Defendant from exercising its statutory power of sale. The Plaintiff contests this asserting that the court is duly vested with jurisdiction to determine the matter.
17. A review of the record shows that the court expressly acknowledged in its judgment that assessing the 2nd Defendant’s entitlement to exercise its statutory power of sale would involve a detailed scrutiny of the loan accounts and statutory notices matters which lie beyond its jurisdiction as per the reasoning in Co-operative Bank of Kenya Limited vs Patrick Kang’ethe Njuguna & 5 Others [2017] eKLR.
18. However, the present Motion is distinct in nature. The court is not being invited to revisit or interrogate the validity of the 2nd Defendant’s statutory power of sale, but rather, to determine whether the Plaintiff has met the legal parameters for the grant of a stay of execution pending appeal. This is an inquiry that falls squarely within the court’s jurisdiction under Order 42 Rule 6 of the Civil Procedure Rules. The plea of want of jurisdiction fails.
19. The 2nd Defendant also alleges that there are no orders capable of being stayed. It is a settled principle that only positive orders may be stayed. The Court of Appeal in Co-operative Bank of Kenya Limited



vs Banking Insurance & Finance Union (Kenya) [2015] KECA 353 (KLR) explained that an order for stay of execution presupposes the existence of a positive obligation imposed by a decree or judgment.

20. The court held that an order for stay of execution pending appeal is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a judgment, underscoring that a stay operates only where there is something to halt or suspend.
21. To ascertain whether the impugned order is positive or negative, this court is guided by the Court of Appeal's reasoning in *Law Society of Kenya vs Deynes Muriithi & 34 Others* [2015] KECA 686 (KLR). In that case, the court observed that orders restraining parties from enforcing resolutions or compelling the release of information were positive in nature, as they required a specific act or restraint capable of enforcement, and thus could be stayed. Conversely, the court reaffirmed that negative orders, such as those dismissing or striking out suits, do not impose any obligations and therefore cannot be the subject of a stay.
22. In the present matter, the judgment dismissed the Plaintiff's suit for want of merit. The court, however, partially allowed the 2nd Defendant's counterclaim, granting, among others, a declaratory order that the legal charge dated 17th June 2016 and registered on 19th September 2016 over L.R. No. 209/8294/119, Nairobi, is valid, legal, and enforceable as against the Chargor.
23. Whereas the dismissal of the Plaintiff's suit constituted a negative order that brought her claim over the suit property to an end, the declaratory relief granted in favour of the 2nd Defendant under its counterclaim is positive in nature, as it affirms enforceable rights under the charge instrument. The two outcomes cannot be divorced from each other. Consequently, the argument that there are no subsisting orders upon which a stay may be anchored is without merit.
24. The law with respect to stay of execution pending appeal is found in Order 42 Rule 6(1) and (2) of the Civil Procedure Rules, 2010 which provides as follows:

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 sub rule (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.”



25. In *Vishram Ravji Halai vs. Thornton & Turpin* Civil Application No. Nai. 15 of 1990 [1990] KLR 365, the Court of Appeal, discussing the High Court’s [read ELC’s] jurisdiction under this Order stated:

“The Superior Court’s discretion to order a stay of execution of its order or decree is fettered by three conditions. Firstly, the applicant must establish a sufficient cause, secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay and thirdly the applicant must furnish security. The application must of course be made without unreasonable delay.”

26. What arises from the foregoing is that the grant of orders of stay of execution is subject to the court’s discretion, the court in this respect being guided by the provisions of Order 42 Rule 6 of the Civil Procedure Rules. The question of how the court should exercise this discretion was extensively discussed by the Court of Appeal in *Butt vs Rent Restriction Tribunal* [1982] KLR 417 as follows:

- “1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
5. The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”

27. Further to the above, this court is now enjoined to give effect to the overriding objectives in the exercise of its powers as expressed in Section 3 of the *Environment and Land Court Act* and Section 1A of the *Civil Procedure Act* to wit the just, expeditious, proportionate and affordable resolution of disputes. The court is so guided.

28. By way of brief background, the Plaintiff/Applicant claimed ownership of L.R. No. 209/8294/119 (I.R. 29542), Akiba United Estate, South C, Nairobi, asserting that she lawfully purchased the property from the 1st Defendant, fully paid the purchase price, and thereby extinguished the 1st Defendant’s rights and interests.

29. She asserted that despite her having purchased the suit property and granted vacant possession thereof, the 1st Defendant went ahead and secured a second charge over the property which she deemed



fraudulent, illegal, and void ab initio. She asserted that the 1st Defendant had no proprietary rights and that the 2nd Defendant failed to exercise due diligence before registering the charge.

30. In its Counterclaim, the 2nd defendant sought, among others, a declaration upholding the validity and enforceability of the charge, and recognition of its right to sell the property to recover the sums secured thereby.
31. After considering the matter, the court rendered its judgment on 20th March, 2025. In doing so, it dismissed the Plaintiff's suit and found the 2nd Defendant's counterclaim to be partly merited declaring the charge over the suit property valid and enforceable.
32. Aggrieved by this decision, the Plaintiff intends to appeal to the Court of Appeal. She asks this court to stay the execution of the aforesaid judgment and the decree arising therefrom pending determination of the pending appeal.
33. Turning now to the issue of whether the parameters for stay have been satisfied, the court first observes that the Applicant has deponed to, and submitted on the merits of its draft memorandum of appeal asserting its arguability. It is important to clarify that the court's jurisdiction to grant a stay of execution pending appeal is anchored in Order 42 Rule 6 of the Civil Procedure Rules.
34. Notably, this provision does not make the arguability of the appeal one of the conditions precedent for the grant of a stay. This position is well-founded. It would be both procedurally improper and logically untenable for this court to assess the arguability of an appeal arising from its own decision. The court will disregard any arguments under this head.
35. Moving to the pre-requisites under Order 42 Rule 6(2), the court will begin with the aspect of sufficient cause. What constitutes the same was explicitly discussed by the court in *Antoine Ndiaye vs. African Virtual University* [2015] eKLR, which persuasively stated:

“The relief of stay of execution pending appeal is governed by Order 42 Rule 6 of the Civil Procedure Rules. The relief is discretionary although, as it has been said often, the discretion must be exercised judicially, that is to say, judiciously and upon defined principles of law; not capriciously or whimsically. Therefore, stay of execution should only be granted where sufficient cause has been shown by the Applicant. And in determining whether sufficient cause has been shown, the court should be guided by the three prerequisites provided under Order 42 Rule 6 of the Civil Procedure Rules, that:

- a) The application is brought without undue delay;
 - b) The court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered; and
 - c) 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.”
36. The court concurs. In determining whether sufficient cause has been established, the court will examine whether the Applicant has satisfied the three mandatory prerequisites to the grant of stay pending appeal.



37. The question of what constitutes unreasonable delay was discussed in the case of Jaber Mohsen Ali & another vs Priscillah Boit & another [2014] eKLR where Munyao J stated 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. In the case of Christopher Kendagor v Christopher Kipkorir, Eldoret E&LC 919 of 2012 the applicant had been given 14 days to vacate the suit land. He filed an application one day after the 14 days. The application was denied, the court holding that, the application ought to have come before expiry of the period given to vacate the land.”

38. The judgment sought to be appealed from was delivered on 20th March 2025, and the Notice of Appeal was lodged on the same date. The present Motion was filed approximately fourteen (14) days thereafter. The court is satisfied that there was no undue delay in bringing the application. Indeed, the 2nd Respondent has also conceded that the Motion was filed timeously.

39. In Rhoda Mukuma vs John Abuoga [1988] eKLR, the court proffered the following definition of substantial loss:

“Granting a stay in the High Court is governed by Order XLI rule 4(2), the questions to be decided being – (a) whether substantial loss may result unless the stay is granted and the application is made without delay; and (b) the applicant has given security. The discretion under rule 5(2)(b) is at large, but as was pointed out in the Kenya Shell case substantial loss is the cornerstone of both jurisdictions. That is what has to be prevented, because such loss would render the appeal nugatory...”

40. Similarly, the court in Century Oil Trading Company Ltd vs Kenya Shell Limited as cited in Muri Mwaniki & Wamiti Advocates vs Wings Engineering Services Limited [2020] eKLR, held:

“The word 'substantial' cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the Code expressly prohibits stay of execution as an ordinary rule it is clear the words 'substantial loss' must mean something in addition to all different from that.”

41. The courts have also held that substantive loss must be demonstrated. This position was articulated by the Court of Appeal in Kenya Shell Limited vs Benjamin Karuga Kibiru & another [1986] eKLR thus:

“It is usually a good rule to see if Order 41 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 cornerstone of both jurisdictions for granting stay.”

42. The court in James Wangalwa & Another vs Agnes Naliaka Cheseto [2012] eKLR similarly opined that the process of execution alone does not amount to substantial loss. It stated as follows:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is



the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail...”

43. The court is also alive to its duty to balance the interests of an Applicant who is seeking to preserve the status quo pending the hearing of the appeal so that his/her appeal is not rendered nugatory, and the interests of a Respondent who is seeking to enjoy the fruits of his judgment.
44. The Plaintiff contends that she will suffer substantial loss if the stay is not granted. It is her assertion in this regard that there is real and imminent danger of the 2nd Defendant exercising its statutory power of sale. If this happens, she will be exposed to imminent dispossession.
45. Further still, she argued, if the bank is allowed to sell the suit property, the entire substratum of the case will be destroyed and the appeal will be rendered nugatory she argued. In the event she wins the appeal, a similar property for the same value and location will not be available.
46. The 2nd Defendant, on its part, contends that the Plaintiff has not demonstrated any likelihood of sustaining substantial loss. It asserts that it is a reputable financial institution with assets worth billions of shillings and that in the event the Applicant succeeds on appeal, it will be able to pay any award of damages. As such, the Applicant’s interests are adequately safeguarded under Section 99 of the [Land Act](#).
47. The central issue in this matter revolves around the ownership of the suit property and the validity of the charge registered in favour of the 2nd Defendant. The Plaintiff asserts that the charge is tainted by fraud and illegality and contends that unless stay orders are granted, the 2nd Defendant will proceed to sell the property, an action that would permanently extinguish her ownership rights and render the intended appeal nugatory.
48. Ordinarily, a person who voluntarily charges his/her property assumes the risk of its sale and cannot later complain of loss upon its realization. However, this case is exceptional. The Plaintiff is not indebted to the 2nd Defendant and disputes the very foundation of the charge, alleging that it was created fraudulently and contrary to her proprietary rights.
49. In these circumstances, the court is convinced that the Plaintiff stands to suffer substantial loss if the stay sought is not granted. The 2nd Defendant has expressed a clear intention to realize the security, and upon sale, the property would vest in a third party. Such a transfer would permanently divest the Plaintiff of her ownership rights and create an irreversible situation that can not be undone even if the appeal ultimately succeeds.
50. The issue of provision of security is discretionary and it is upon the court to determine the same. It must be reiterated that what suffices as security is for the court to determine, and whereas the Plaintiff may give a proposal, the ultimate determination is for the court.
51. Considering the circumstances of the case, and view of the fact that the 2nd Defendant has charged the suit property, the court declines to impose any security for the due performance of the decree.
52. In the end the Motion is found to be merited and the court grants the following reliefs:
 - i. An order of stay of execution of the Judgment and Decree delivered on the 20th day of March, 2025 does hereby issue pending the hearing and determination of the Appeal at the Court of Appeal.



ii. Each party will cater for its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH DAY OF NOVEMBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Opullu for Plaintiff/Applicant

Mr. Kisinga for 2nd Defendant

Court Assistant- Tracy

