

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND COURT AT KAKAMEGA**  
**ELC CASE NO. E004 OF 2022**

**GORI INVESTMENTS LIMITED.....**

**PLAINTIFF**

**VERSUS**

**APOSTOLIC FAITH CHURCH.....1<sup>ST</sup>**

**DEFENDANT**

**THE CHIEF LAND REGISTRAR.....2<sup>ND</sup>**

**DEFENDANT**

**RULING**

1. Before court is a notice of motion dated 22<sup>nd</sup> July 2025 filed by the plaintiff seeking orders of stay of execution of the Judgment delivered in this matter on 14<sup>th</sup> July 2025, pending hearing and determination of the intended appeal to the Court of Appeal. The application is anchored on the affidavit sworn by the plaintiff on 23<sup>rd</sup> July 2025. The applicant's position is that he has filed notice of appeal against the judgment herein made on

14<sup>th</sup> July 2025. That he stands to suffer substantial loss if stay is not granted as there is a real danger of the respondent selling or transferring the suit property if execution proceeds and that as the 1<sup>st</sup> respondent is in occupation it will not suffer prejudice if orders sought are granted.

2. The application was opposed. The 1<sup>st</sup> respondent filed grounds of opposition dated 1<sup>st</sup> August 2025. It stated that the application was misconceived, bad in law and does not disclose reasonable grounds. That the application is a flagrant abuse of the court process and does not meet the threshold for grant of the orders sought. That the application seeks to stay negative orders and that the court is *functus officio*.

3. Parties filed written submissions which the court has duly considered.

4. Having considered the application, grounds of opposition and submissions the only issue that arises for the court's determination is whether the applicant has met the

threshold for grant of orders of stay of execution pending appeal.

5. Order 42 Rule 6 of the Civil Procedure Rules provides for the jurisdiction of the court to grant orders of stay of execution pending appeal as follows;

**Stay in case of appeal [Order 42, rule 6]**

- (1) 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.**

6. Imminent execution cannot in itself be a basis for grant of stay of execution pending appeal, as execution is a lawful process that follows grant of an order, judgment or decree by a court. Therefore, for an applicant to succeed in seeking stay pending appeal, they must demonstrate that they stand to suffer substantial loss; that they have sought for stay without unreasonable delay and show willingness to provide security for the due performance of the decree that may issue against them.

7. The Court of Appeal enunciated principles to be considered in determining whether to grant or refuse stay

of execution pending appeal in **Butt vs Rent Restriction Tribunal [1979]KLR** as follows:

**“a.The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.**

**b.Secondly, 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 the appeal court reverse the judge’s discretion.**

**c.Thirdly, 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.**

**d.Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. 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 of costs**

**as ordered will cause the order for stay of execution to lapse.”**

8. In the instant matter, in the judgment made herein, the court made a declaration that the 1<sup>st</sup> defendant is the rightful owner of the suit property and ordered cancellation of the plaintiff's title thereto. The plaintiff has expressed apprehension that the suit property may be sold or transferred by the 1<sup>st</sup> respondent which may defeat his appeal and render it nugatory. The 1<sup>st</sup> defendant did not allay those fears as no replying affidavit was filed. The 1<sup>st</sup> defendant is in occupation of the suit property and therefore the prejudice that may be suffered may be atoned in costs. Therefore, it is clear to me that the plaintiff has demonstrated substantial loss.

9. In the premises I find and hold that the application dated 22<sup>nd</sup> July 2025 is merited and the same is hereby allowed to the extent that I hereby grant stay of execution of the judgment herein delivered on 14<sup>th</sup> July 2025 for 24 months.

10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN  
OPEN COURT/VIRTUALLY THROUGH MICROSOFT  
TEAMS VIDEO CONFERENCING PLATFORM THIS 26<sup>TH</sup>  
DAY OF NOVEMBER, 2025**

**A. NYUKURI  
JUDGE**

**In the presence of;**

Ms. Muthoni holding brief for Mr. Michuki for the plaintiff

No appearance for the defendant

Court Assistant: Delphine