



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELCA CASE NO. E007 OF 2025

**CATHERINE CIRINDI JOSPETER &
KELVIN MAWIRA MURITHI (*Suing as the
Administrators/Legal representatives of the
estate of the late EDWARD MURITHI
MUTEGI*)APPELLANT**

=VERSUS=

**SUSAN CIANKOROI MUTEGI.....1ST
RESPONDENT**

JUSTIN MUTEGI M'ARACHI.....2ND

RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 30/7/2025, through which the estate of the late **Edward Murithi Mutegi** (*the applicant*) seeks an order staying execution of the judgment dated 24/7/2025 and all the consequential orders in **Chuka CMC E & L Case No E031 of 2022**, pending the hearing and determination of this appeal. The key question to be determined in the ruling is whether the application meets the criteria upon which this court exercises jurisdiction to grant an order of stay of

execution pending the hearing and disposal of an appeal before it.

2. The application is premised on the grounds outlined in the motion and in the affidavit of **Catherine Cirindi Jospeter** dated 30/7/2025. It was canvassed through written submissions dated 19/9/2025, filed by **M/s Maore Kambura & Co Advocates**. In summary, the case of the applicant is that they were dissatisfied with the judgment of the trial court and they brought this appeal. The trial court's judgment was based on the original plaint yet they had filed an amended plaint. They amended their original plaint to plead trust in place of fraud. They contend that the trial court failed to consider the issues raised in the amended plaint and rendered a judgment that was based on non-existent pleadings and non-existent issues.
3. The estate adds that execution of the order decreeing removal of the cautions should be stayed in order to preserve the suit lands, pending the hearing and disposal of the appeal
4. The respondents opposed the application through a replying affidavit sworn on 22/9/2025 by **Justin Mutegi M'Rachi** (*the 2nd respondent*) and written submissions dated 24/10/2025, filed by **M/s Lucy Kaaria, Matumbi & Co Advocates**. They term the application as a non-starter, frivolous, vexatious, forlorn and an abuse of the process of the court.
5. The respondents contend that the impugned judgment contained a negative order incapable of attracting an order

of stay of execution. They add that the applicant has failed to satisfy the requirements of **Order 42 rule 6 (2)** of the **Civil Procedure Rules**, pointing out that the applicant has failed to demonstrate the likely substantial loss and that the applicant has failed to offer security for the ultimate due performance of the decree of the trial court.

6. The court has considered the application, the response to the application, and the parties' respective submissions. As pointed out in the opening paragraph of this ruling, the single question falling for determination in the ruling is whether the application meets the criteria upon which this court exercises jurisdiction to grant an order of stay of execution pending disposal of an appeal before it.
7. The relevant criteria has been legislated under **Order 42 rule 6 (2)** of the **Civil Procedure Rules** which provides as follows:

“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.”

- 8.** The impugned judgment was rendered on 24/7/2025. The appeal herein was lodged on 30/7/2025. The application under consideration is dated 22/9/2025 and was lodged on 30/9/2025. A period of 68 days (*from the date of the impugned judgment*) lapsed before the application was lodged. Though not inordinate and inexcusable, this is certainly a long period, moreso, when the court takes into account the anxiety that is associated with litigation relating to land.
- 9.** On substantial loss, the applicant contended that the stay order relates to the order decreeing removal of the subsisting cautions, adding that there is need to preserve the registers relating to the suit lands by maintaining the status quo, pending the hearing and disposal of the appeal. The court is alive to the fact that removal of the cautions will expose the suit lands to possible disposal during the pendency of the appeal. The cautions subsisted during the pendency of the suit in the trial court. The applicant contends that the trial court did not consider and determine the issues raised in the suit, adding that the trial court relied on the original plaint that had fundamentally been amended to bring forth a different set of issues. The applicant is basically saying that the issues which they took to court through the amended plaint have not been determined by the trial court because the trial court erroneously relied on the old plaint which contained a different cause of action.
- 10.** Viewed in the above context, the court is satisfied that in the event the suit lands are disposed and the appeal succeeds, the appellants are likely to suffer substantial loss because

the lands subject matters of the appeal will be out of their reach.

- 11.** On security for the due performance of the decree, the respondents are in occupation of the suit land. Secondly, the only enforceable aspect of the decree of the trial court relates to removal of the caution and recovery of the awarded costs. The court can properly make an order providing for security in the above regards. The court is of the view that a sum of Kshs 100,000/= would be reasonable security.
- 12.** Taking the foregoing into account, the court finds that there is merit in granting an order staying execution of the order decreeing removal of the cautions and recovery of costs of the suit for a defined period of time.
- 13.** In the end, the application dated 30/7/2025 is allowed in the following terms:
 - a) The appellant shall, within 45 days, deposit in court Kshs 100,000/= as security for the due performance of the decree of the lower court.***
 - b) Subject to compliance with the above condition, execution of the order decreeing removal of the cautions registered against Karingani/ Ndagani/10262 and Karingani/Ndagani/10263 shall be stayed for a period of seven (7) months from today.***

c) In the event the sum of Kshs 100,000/= is not deposited in court within 45 days, the order staying execution shall stand vacated.

d) Costs of this application shall be in the appeal.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF NOVEMBER, 2025.

**B M EBOSO [MR]
ELC JUDGE**

In the Presence of:

Ms. Mwaure Advocate for the Appellant

1st Respondents - Absent

2nd Respondent - Justin Mutegi present in person

Court Assistant - Mr. Mwangi