



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT AT NAROK**  
**PETITION NO. E006 OF 2024**  
**IN THE MATTER OF THE PREAMBLE TO THE CONSTITUTION OF**  
**KENYA 2010**  
**AND**  
**IN THE MATTER OF ARTICLES 22,23,159,162(2), 165 AND 258 OF**  
**THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND**  
**FUNDAMENTAL FREEDOMS UNDER ARTICLES 3(1), 10,19,20,21,**  
**27(1), 40,47,48,50,60 AND 64 OF THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF THE CONSTITUTION OF KENYA(PROTECTION OF**  
**RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND**  
**PROCEDURE**  
**AND**  
**IN THE MATTER OF SECTION 3 AND 13 OF THE ENVIRONMENT &**  
**LAND COURT ACT, NO. 19 OF 2011**  
**AND**  
**IN THE MATTER OF SECTIONS 30,35,37,79(1) & 86 OF THE LAND**  
**REGISTRATION ACT, NO. 3 OF 2012**  
**BETWEEN**  
**PAPIYO INVESTMENT LIMITED.....PETITIONER/APPLICANT**

**-VERSUS-**

<b>WILLIAM</b>	<b>MURERO.....</b>	<b>1<sup>ST</sup></b>
<b>RESPONDENT</b>		
<b>DANIEL</b>	<b>MURERO.....</b>	<b>2<sup>ND</sup></b>
<b>RESPONDENT</b>		
<b>THE LAND</b>	<b>REGISTRAR,NAROK.....</b>	<b>3<sup>RD</sup></b>
<b>RESPONDENT</b>		
<b>THE ATTORNEY</b>	<b>GENERAL.....</b>	<b>4<sup>TH</sup></b>
<b>RESPONDENT</b>		

**AND**

<b>WILLIAM</b>	<b>MURERO.....</b>	<b>1<sup>ST</sup></b>	
<b>PETITIONER</b>			<b>CROSS-</b>
<b>DANIEL</b>	<b>MURERO.....</b>	<b>2<sup>ND</sup></b>	<b>CROSS-</b>
<b>PETITIONER</b>			
<b>WILLIAM MURERO &amp; DANIEL MURERO</b>			

**RULING**

1. The matter for determination is the **Notice of Motion Application** dated **22<sup>nd</sup> September 2025**, brought by the Petitioner/ Applicant herein **Papiyo Investment Ltd**, which Application is expressed to be brought under **Sections 1A, 1B & 3A** of the **Civil Procedure Act**, and **Order 42 Rule 6** and **Order 51** of the **Civil Procedure Rules** seeking for the following orders: -

- 1. That pending the hearing and determination of this application, this honourable court be pleased to grant temporary stay of execution of the Judgment delivered on 18<sup>th</sup> September 2025.**
- 2. That this honourable court be pleased to issue an order of stay of execution of the Judgment delivered on 18<sup>th</sup> September 2025, pending the hearing and determination of the applicant's intended appeal to the Court of Appeal.**
- 3. That costs of this application be provided for.**
- 4. That the court be pleased to issue such further and other reliefs as it deems fit and expedient in the circumstances.**

2. The Application is premised on the grounds *inter alia* that this court delivered judgment on **18<sup>th</sup> September 2025**, and ordered for the **cancellation** of its Certificate of title, which substantially affects the Petitioner/ Applicant's proprietary rights and interests over the suit property known as **Cis Mara/Lemek/ 190**.

3. The Notice of Motion Application is supported by the Affidavit of **Patel Gopal Dhanji Velji**, the Director of the Petitioner/ Applicant herein which is sworn on even date. The Petitioner/ Applicant deposed that being dissatisfied with the Judgment of the court delivered on **18<sup>th</sup> September 2025**, they intend to file an appeal to the Court of Appeal against the whole decision.
4. The Petitioner/ Applicant further deposed that the intended Appeal raises **substantial** and **arguable** issues of both fact and law, and unless stay of execution is granted, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents may proceed to enforce the decree by effecting cancellation of its title rendering the intended appeal nugatory. Further, it was deposed that the Petitioner/ Applicant is in actual possession of the suit property, and has massively invested in the same by making substantial developments and improvements thereon. That for this reason, it stands to suffer great loss and damage should the judgment be executed.
5. Further, the Petitioner/ Applicant deposed that no prejudice will be occasioned upon the Respondents as the effect will only be to preserve the **status quo** of the suit property pending the hearing and determination of the intended appeal. Further, that it is ready and willing to comply with any terms or conditions that this court may deem fit to impose for the grant of the orders sought.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents who are also the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Cross Petitioners filed their Grounds of Opposition dated **9<sup>th</sup> October 2025**, challenging the Application on the following grounds: -

**1. The Petitioner's Notice of Motion Application dated 22<sup>nd</sup> September 2025, has no exhibits produced in support as all the purported**

**exhibits marked by the Petitioner/ Applicant are blank pieces of paper that do not meet the threshold of Rule 9 of the Oaths and Statutory Declaration Rules, under Chapter 15 of the Laws of Kenya.**

- 2. The Notice of Motion dated 22<sup>nd</sup> September 2025, is grossly incompetent as it is res judicata in as much as the Petitioner/Applicant did orally seeking from this Court the same stay of execution orders on 18<sup>th</sup> September, 2025, and which plea was declined by reason of which the Petitioner/Applicant thereupon sought for leave to appeal the said decision to the Court of Appeal (and was granted) against the said dismissal.**
- 3. The pleas set in the said Notice of Motion dated 22<sup>nd</sup> September, 2025 are moot and have been overtaken by events as the certificate of title asserted by the Applicant over the suit property Narok/Cis-Mara/Lemek/190, has already been cancelled pursuant to the decree of this Court, and the Court cannot act in vain, hence the pleas sought by the petitioner are incapable of grant.**
- 4. The Notice of Motion Application dated 22<sup>nd</sup> September, 2025 is without merit as the Petitioner/Applicant has not met the statutory threshold for the grant of relief sought under Order 42 of the Civil Procedure Rules.**
- 5. This instant Notice of Motion is frivolous and a back-door attempt by the Petitioner/Applicant to obliquely block, and stall the effecting of the**

***terms of the judgment of this court dated 18<sup>th</sup> September 2025, and keeping the 1<sup>st</sup>, 2<sup>nd</sup> Respondents and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Cross Petitioners/Applicants from enjoying the fruits of their judgment lawfully issued.***

- 6. No irreparable harm will be visited on the petitioner/ applicant by the denial of the orders of stay of execution, and whatever it asserts as its title to the suit property (which is denied) can always be restored in the proprietorship section of the parcel register of the suit property (with respect) in the very unlikely event of a win at the Court of Appeal.***
- 7. The Notice of Motion dated 22<sup>nd</sup> September, 2025 is based on falsehoods as the construction of the structures on the suit property allegedly by the applicant were actually erected in the year 1989, at a time when the Petitioner/Applicant had never been incorporated, and the said structures were to be left on the suit property by the hitherto licensee over the suit property, identified as Sahakar Ltd as agreed with the deceased John Tupenet Murero.***
- 8. All the issues raised in the Notice of Motion Application dated 22<sup>nd</sup> September, 2025 comprise grounds of appeal which this court cannot sit to entertain s is now invited.***
- 9. The draft Memorandum of Appeal annexed to the Petitioner/Applicant's deposition in support of the Notice of Motion dated 22<sup>nd</sup> September, 2025 bears no cogent grounds with a possibility***

***of success, as no magistrate entered the judgment of this honourable court sought to be appealed against, as purported in Ground 8 of the Petitioner/Applicant's said Draft Memorandum of Appeal.***

***10. The Petitioner/Applicant's Notice of Motion dated 22<sup>nd</sup> September, 2025 is frivolous, vexatious and a gross abuse of the court process.***

***11. The purported 'certificate of electronic evidence' relied on by the Petitioner/Applicant is not signed and hence of no evidential value, and has been ostensibly made by the Petitioner/Applicant's Advocate in breach of the Advocates Ethics Rules by reason of which it has no evidential value.***

7. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents urged the court to dismiss the instant Notice of Motion Application with costs.
8. The Application was further opposed vide the Replying Affidavit of the 1<sup>st</sup> Respondent **WILLIAM MURERO**, sworn **on 9<sup>th</sup> October, 2025**, on his behalf and on behalf of the 2<sup>nd</sup> Respondent (**DANIEL MURERO**). The 1<sup>st</sup> Respondent deposed that the Application has **been overtaken by events**, and that the Petitioner/ Applicant has failed to meet the set threshold for the grant of the said relief, as there is no evidence demonstrating sufficient cause or substantial loss. Further, he deposed that the instant application has no exhibits lawfully produced in support of the Application as they are blank pieces of paper which do not meet the threshold of **Rule 9** of the **Oaths and Statutory Declaration Rules** under **Cap 15** of the Laws of Kenya. Further, that failure to comply with relevant laws on

admission of its exhibits would call for striking out of such exhibits from the court record as maintaining them would be misleading.

9. The 1<sup>st</sup> Respondent further deposed that the instant Application is *res judicata* as the Petitioner/ Applicant made an oral application seeking stay of execution on **18<sup>th</sup> September, 2025**. He deposed that the relevant procedural laws of *res judicata* and estoppel bar such a move to effectively re-litigate the same issue yet it has been decided and dismissed.
10. The 1<sup>st</sup> Respondent also deposed that the Petitioner/ Applicant did not offer any form of security, as is expedient in the circumstances, bearing in mind that the suit property has been used for commercial gain to the detriment and loss of the estate. Further, that the Application ***is moot*** having been overtaken by events as the title over the suit property has been cancelled pursuant to the decree of this court. He deposed that ***no irreparable harm*** will be visited upon the Petitioner/ Applicant if the orders are not granted as the same can always be restored in the proprietorship section of the register.
11. The 1<sup>st</sup> Respondent further deposed that the Petitioner/ Applicant has not demonstrated how it will overcome on appeal or overturn the unequivocal findings of this court, and there is no material contradicting the findings made by the court either. He deposed that the Judgment of this court has already been implemented, and there is no substantial loss that can arise in the lawful execution of the judgment.
12. In response thereto, the Petitioner/ Applicant filed a Supplementary Affidavit sworn on ***30<sup>th</sup> October, 2025***. While reiterating the contents of its Supporting Affidavit, the Petitioner/ Applicant deposed

that the annexures were duly marked, references and properly attached. It was further deposed that the oral plea made on **18<sup>th</sup> September, 2025** ,was merely an interim request for preservation orders ,pending the formal filing of the present application.

13. The Petitioner/ Applicant also deposed that the allegation that the application has been overtaken by events is premature and irregular as there is a ***status quo order*** of **23<sup>rd</sup> September, 2025**, that expressly preserves the suit property pending the *inter partes* hearing of this application, and the said cancellation was undertaken in contempt of the said order. Further, that the filing of the Notice of Appeal does not bar this court from entertaining the Application as the same is expressly provided for under ***Order 42 Rule 6*** of the ***Civil Procedure Rules***.
14. The Petitioner/ Applicant further deposed that it has demonstrated sufficient cause, and a high risk of substantial loss should the execution proceed. Further, that the application is tenable and raises weighty legal and constitutional questions. Further, that the contention that no security has been offered is misconceived as it has willingly expressed its intention to comply with the directions that the court may give.
15. The instant Notice of Motion Application was canvassed by way of written submissions. The Petitioner/ Applicant filed its written submissions dated ***30<sup>th</sup> October, 2025***, and raised five issues for determination as listed below: -
  - a. Whether the present application is res judicata.***
  - b. Whether the present application meets the threshold for grant of orders of stay of execution pending hearing and determination of the appeal.***

**c. Whether the present application has been overtaken by events.**

**d. Whether the alleged procedural defects amount to mere procedural technicalities curable under Article 159 of the Constitution.**

**e. Whether the applicant is entitled to the costs of this suit.**

16. On the first issue, it was submitted that the oral application made on **18<sup>th</sup> September, 2025** was neither heard or determined on its merit as the court did not issue any ruling or make any order arising from that plea. That in the absence of a final determination on the substantive issues, the doctrine of *res judicata* is inapplicable, misplaced and untenable. To buttress on this issue, the Petitioner/ Applicant relied on the case of **Bernard Mugo Ndegwa v James Nderitu Githae & 2 others [2010] eKLR**.

17. On the second issue, and while relying on the case of **Butt v Rent Restriction Tribunal [1979] KECA 22**, the Petitioner/ Applicant submitted that this court has the power to grant or refuse an Application for stay of execution. Further, the Petitioner/ Applicant submitted that the instant application has been **made without delay**, and having made substantial developments on the suit property since its acquisition in **2007**, the property is now valued in **billions** and unless stay of execution is granted, irreparable loss will be suffered and which will render the appeal nugatory. Reliance was placed in the case of **Kemfro Ltd v Kabare Baragwi & Ngariama Co-operative Society & 3 Others, High Court at Nairobi, Civil Case No. 2069 of 1996**.

18. The Petitioner/ Applicant further submitted that if the appeal succeeds and the title is already cancelled, it will be forced to start

afresh the process of registration thus incurring costs and time in the process. Further, that if the decree has been extracted as evidenced, there exists imminent threat of execution, thus occasioning loss of personal property which is critical for its livelihood and sustenance. Further, it was submitted that it is willing to comply with the court's direction on security as envisaged under **Order 42 Rule 6 (2)(b)** of the **Civil Procedure Rules**.

19. On the third issue, the Petitioner/ Applicant submitted that the substratum of the appeal remains alive and it continues to face the imminent risk of execution of the impugned decree. Reliance was further placed in the case of **Consolidated Marine v Nampijja & Another, Civil App. No. 93 of 1989 (Nairobi)**.
20. On the fourth and fifth issues, the Petitioner/ Applicant submitted that the mere inadvertent omission of the deponent's signature does not go to the substance or authenticity of the evidence, but constitutes a curable procedural defect. To buttress on this issue, the Petitioner/ Applicant relied on the case of **Raila Odinga v IEBC and 4 others [2013] eKLR**.
21. In conclusion, the Petitioner/Applicant submitted that costs follow event unless for good reason the court may otherwise order. Further, the Petitioner/ Applicant submitted that it has demonstrated that it is in actual occupation of the suit property and stands to suffer loss if stay is not granted.
22. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their written submissions dated **9<sup>th</sup> October, 2025**, and they raised four issues as outlined below:-
  - a. Whether the petitioner's supporting affidavit to the notice of motion dated 22<sup>nd</sup> September, 2025 has**

***exhibits lawfully produced under Rule 9 of the Oaths and Statutory Declaration Rules.***

***b. Whether the petitioner's notice of motion dated 22<sup>nd</sup> September 2025 amounts to a second bite at the cherry on the stay of execution plea having been made orally on 18<sup>th</sup> September, 2025 and is therefore res judicata.***

***c. Whether the petitioner's motion dated 22<sup>nd</sup> September, 2025 meet the threshold for the grant of stay of execution under Order 42 Rule 6 of the Civil Procedure Rules.***

***d. Who should meet the costs of the application dated 22<sup>nd</sup> September, 2025.***

23. On the first issue, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the exhibits annexed to the Application does not meet the threshold provided under **Rule 9** of the **Oaths and Statutory Declaration Rules** under **Cap 15** of the Laws of Kenya. They relied on the case of **AAD v MED (Matrimonial Cause E002 of 2020) [2023] KEHC 931 (KLR) (14 February 2023) (Ruling), Francis A. Mbalanya v Cecilia N. Waema [2017] KEELC 3356 (KLR), Halima Bare & 13 Others v Maendeleo Ya Wanawake Organization [2004] eKLR, Solomon Omwega Omache & another v Zachary O. Ayieko & 2 others [2016] eKLR, and Republic v Commissioner General, Kenya Revenue Authority & 2 others [2011] eKLR.**

24. On the second issue, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that there is no evidence to show that the Petitioner/ Applicant stands to suffer any loss or even substantial loss. Further, that the instant application is *res judicata* following the oral application made on **18<sup>th</sup> September, 2025**. To further buttress on this issue, they relied on the case of **Arnold v National West Minister Bank (1991) 2 A. C**

**93, Telkom Kenya Ltd v John Ochanda [2014] eKLR, and Fidelity Commercial Bank Limited v Shah & 3 others (Civil Application E038 of 2022) [2022] KECA 1275 (KLR) (18 November 2022) (Ruling).**

25. While further relying on the case of **Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others [2014] eKLR, and Mwatha v Karanja (Civil Appeal E308 of 2024) [2025] KEHC 6146 (KLR) (Civ) (20 March 2025) (Ruling)**, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents further submitted that the Petitioner/ Applicant having not offered such security, it implies that it is uncontested that the Applicant has not met the terms of **Order 42 Rule 6** of the **Civil Procedure Rules**.
26. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents further submitted that the instant application is moot having been overtaken by events. Reliance was placed in the case of **National Assembly of Kenya & another v Institute of Social Accountability & 6 others [2017] eKLR**.
27. On **10<sup>th</sup> November 2025**, the parties highlighted their submissions. By and large, the submissions were a replica of the written submissions filed, and there would be no need of reproducing the same, save to state that the oral submissions have been duly considered.
28. This court has carefully considered the instant Notice of Motion Application, the replies thereof and the written submissions filed by the respective parties. The Court finds single issue for determination by this court is whether **the petitioner/ applicant is entitled to the orders of stay of execution pending appeal**.

29. Before delving into the merits or otherwise of the instant application, there are certain pertinent issues that the court must address first before anything, and if the court finds them to be merited, there will no need to determine the instant application. Immediately after the judgment was delivered by the court on **18<sup>th</sup> September 2025**, Mr. Michuki, the learned counsel for the Petitioner/ Applicant made an oral application and stated follows:-

***“We seek for stay of the Judgment for a period of 30 days to enable us file a Notice of Appeal. The Appeal will be rendered nugatory if stay is not granted. The Petitioner has made substantial investment being a hotel. He stands to suffer if stay is not granted.”***

30. In response thereto, Mr. Kinyanjui, the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent opposed the application and stated thus: -

***“The court has pronounced itself. The court cannot sit on its own appeal. “A stay of execution is granted on appeal to the Court of Appeal. There should be a Notice of Appeal. We do not know if the Petitioner will appeal. The land belongs to John Murero’s estate. The land cannot be taken away. There is no basis for the stay sought. The requirements under Order 42 Rule 6: is a Civil Procedure domain. What framework will the Petitioner invoke. Let the Petitioner file a formal application. This is a speculation.”***

31. In rejoinder, Mr Michuki submitted;

***“This is a Constitutional Petition. The Court under Mutunga Rules do not need to see a formal application. We can pursue the suit properly. My client intends to appeal. The Judgment has just***

***been delivered. My words should count; I will file an appeal. I seek for 14 days to file the stay of execution.”***

32. Having considered the oral application and the submissions by the learned counsel, this court pronounced itself as follows: -

- i. The Judgment has just been delivered.***
- ii. There is no danger of execution.***
- iii. Let the petitioner get hold of the Judgment and then file a Notice of Appeal and also file a formal application for stay because for now there is no danger of execution.***
- iv. Let the Petitioner file the formal application for stay of execution of the instant judgment.”***

33. Thereafter, the learned counsel for the Petitioner/ Applicant sought for leave to appeal against the ruling for failure to grant the stay. This court granted leave to the Petitioner/ Applicant to appeal against the directions to file a formal application for stay of execution of the Judgment.

34. In opposing the instant application, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have argued that the instant Application is *res judicata* on account of an oral application having been made after judgment was delivered. In contending with this ground, the Petitioner/ Applicant argued that on **18<sup>th</sup> September, 2025**, they merely made an interim request for preservation orders pending the formal filing of the present application.

35. **Order 42 Rules (6) sub rule (5)** of the **Civil Procedure Rules** states that an application for stay of execution may be made

informally immediately after the delivery of a judgment or ruling. This rule gives a party dissatisfied with the decision of the court, the right to make a request for stay pending appeal, which application may be made orally. However, this a Constitutional Petition.

36. In the instant case, and going by the events which followed the delivery of the judgment, it is clear that the Petitioner/ Applicant made an oral application for stay of execution which was denied on account of there being no danger of execution. The Petitioner/ Applicant cannot argue that it merely made a request for preservation orders pending a formal application.
37. However, the second limb of the court's orders directed the filing of a notice of appeal and the filing of a formal application, and to a great extent this was made in the pretext that Petitioner/ Applicant would have read the judgment and in case of real danger, it would have moved the court accordingly. Having said that and bearing in mind that it is the right of every party to file an appeal, and where there is threat, seek the court's intervention, it is only fair that the Petitioner/ Applicant is heard as it is evident that it complied with the court's directive.
38. Secondly, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents deposed that the exhibits are defective on account of non-compliance with **Rule 9 of The Commissioners For Oaths (Fees On Affidavits) Rules**, provided under the **Oaths and Statutory Declarations Act** which states as follows: -

***“All exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner, and shall be marked with serial letters of identification.”***

39. This court has considered and looked at the Supporting Affidavit as well as the Supplementary Affidavit of the Petitioner's/ Applicant's Director. The same bear the exhibits stamp which are sworn on **22<sup>nd</sup> September, 2025** and **30<sup>th</sup> October, 2025** respectively. While the stamp appears on a separate page, it is clear where the reference is made as it can be inferred from the Affidavits. This court does not find the same defective and fatal to the instant application.
40. Having stated as the above, the court now turns to the main application. **Order 42 Rule (6)** of the **Civil Procedure Rules** 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 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.**

**(3) Notwithstanding anything contained in sub-rule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.**

**(4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.**

**(5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.**

**(6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”**

41. In the case of **Masisi Mwita versus Damaris Wanjiku Njeri [2016] eKLR**, the Court of Appeal held that: -

**“The application must meet a criteria set out in precedents and the criteria is best captured in the case of “Halal & Another -VS- Thornton & Turpin Ltd. where the Court of Appeal Gicheru J.A., Chesoni & Coker AG 1A) held that: “The High Court’s discretion to order stay of execution of its order or Decree is fettered by three (3) conditions**

***namely:- Sufficient Cause, substantial loss would ensue from a refusal to grant stay the Applicant must furnish security, the application may be made without unreasonable delay. In addition the Applicant must demonstrate that the intended appeal will be rendered nugatory if stay is not granted as was held in Hassan Guyo Wakolo -VS- Straman E.A. Ltd.[2013] as follows:-***

***“In addition the Appellant must prove that if the orders sought are not granted and his Appeal eventually succeeded then the same shall have been rendered nugatory”. These twin principles go hand in hand and failure to prove one dislodges the other. The court notes with great humility the Plaintiff/Applicant agrees with it by citing the case of Vishram Rouji Halal -VS- Thrornton & Turpour Civil Appeal No. 15 of [1990] KLR 365,”***

42. Equally so, the purpose of stay of execution is to preserve the substratum of the case. In the case of ***Consolidated Marine. vs. Nampijja & Another, Civil App.No.93 of 1989 (Nairobi)***, the court held that: -

***“The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory”.***

43. From the above, it is clear in order for the court to grant a stay of execution there must be: -

- i. Substantial loss***
- ii. No unreasonable delay.***

**iii. Security and the grant of stay is discretionary.**

44. It is without a doubt that an Application for stay of execution pending appeal has been made without delay. On whether there is substantial loss, the Petitioner/ Applicant argued that its intended appeal raises substantial and arguable issues of both fact and law, and unless stay of execution is granted, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents may proceed to enforce the decree by effecting cancellation of its title rendering the intended appeal nugatory.
45. Further, the Petitioner/ Applicant contended that it is in **actual possession** of the suit property, and has massively invested in the same by making **substantial developments** and improvements thereon. That for this reason, it stands to suffer great loss and damage should the judgment be executed. In support thereof, the Petitioner/ Applicant annexed photographs of **Mara River Lodge** allegedly on the suit property, and a **valuation report** indicating the value of the said development.
46. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents contended that no substantial loss has been demonstrated. In the case of **Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd (in liquidation) [2004] 2 EA 331**, it was held;
- “Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.”**
47. While this court places reliance on the above authority, it is clear that substantial loss cannot be quantified merely because of the

monetary investments on the suit property. While pleading substantial loss, it is necessary for the Petitioner/ Applicant to demonstrate the impending loss to be suffered. In this case, the court in allowing the Cross-Petition by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents granted declaratory orders in prayers **a, b, and c**. Prayer **d** of the said order directed the Land Registrar to remove the entry on the proprietorship section of the suit property bearing the Petitioner's/ Applicant's name made on **26<sup>th</sup> July, 2007**, and further ordered a cancellation of any certificate of title as may have been issued to the Petitioner/ Applicant herein.

48. The Court of Appeal in **Johana Nyokwoyo Buti vs. Walter Rasugu Omariba & 2 Others [2011] eKLR**, held as follows:

***“A declaration or declaratory judgment is an order of the court which merely declares what the legal rights of the parties to the proceedings are and which has no coercive force - that is, it does not require anyone to do anything. It is available both in private and public law save in Judicial Review jurisdiction at the moment. The rule gives general power to the courts to give a declaratory judgment at the instance of a party interested in the subject matter regardless of whether or not the interested party had a cause of action in the subject matter.”***

49. Looking at the above authority which has persuaded this court, it is clear that the Orders issued by this court were declarations, and the application of **prayer d** on cancellation was in conformity with the holding in **succession cause No 95 of 2006**, that the suit land is a trust property, which trusteeship is still intact.

50. More importantly and as is that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents implemented **Order d** of the Judgment as can be seen in the annexure marked “WRA2” indicating a cancellation of the entries made on the title pursuant to a decree dated **24<sup>th</sup> September, 2025.**
51. It is the court’s considered view and looking at the entries made in the register, the Judgment is **spent**, and therefore the application for stay has been overtaken by events, and the **status quo**, in place is that the cancellation of title has already occurred. Consequently, this court finds that substantial loss has not been proved, and importantly, this court cannot issue orders in vain.
52. Having found that substantial loss has not be proven, there would be no need to determine the issue on security for costs. On whether the draft Memorandum of Appeal is arguable and raises weighty issues, that is not an issue for this court to find and hold as doing so would be akin to agreeing with the Petitioner/ Applicant that the court indeed erred, while in essence it applied the law based on the facts and evidence produced before it. Further, it would be tantamount to this court sitting on its own Appeal. However, the court has taken note of the Notice of Appeal filed on **22<sup>nd</sup> September, 2025.**
53. Having considered the instant Notice of Motion Application, and the rival written submissions, and cited authorities, this court finds and holds that the said Application has **no merit** and consequently the Notice of Motion Application dated **22<sup>nd</sup> September, 2025,** is **disallowed.**
54. For the above reasons, the said Notice of Motion Application is hereby **dismissed entirely** with costs to the 1<sup>st</sup> and 2<sup>nd</sup>

Respondents. For avoidance of doubt, the ***status quo Order*** issued on **23<sup>rd</sup> September 2025** are hereby discharged.

***It is so ordered.***

***Dated, signed and delivered virtually at Narok this 28<sup>th</sup> Day of November, 2025***

***L. Gacheru  
Judge  
28/11/2025.***

***Delivered online in the presence of***

***Elijah Meyoki - Court Assistant***

***Ms. Muthoni holding brief for Mr. Michuki for Petitioner/ Applicant***

***Mr. Harrison Kinyanjui for 1<sup>st</sup> and 2<sup>nd</sup> Respondents***

***N/A for 3<sup>rd</sup> and 4<sup>th</sup> Respondents***

***L. Gacheru  
Judge***