



REPUBLIC OF KENYA



**Kimotho v Mushomba (Environment and Land Case E004 of 2023)  
[2025] KEELC 8371 (KLR) (2 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8371 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND CASE E004 OF 2023  
MN GICHERU, J  
DECEMBER 2, 2025**

**BETWEEN**

**NELSON MURUNGARU KIMOTHO ..... PLAINTIFF**

**AND**

**FLORENCE WAMBUI MUSHOMBA ..... DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 21-2-2025. The motion which is by the Defendant is brought under Article 159(2) (d) of *the Constitution* of Kenya, Sections 1A, 1B, 3A and 22 of the *Civil Procedure Act*, Order 42 rule 6 of the Civil Procedure Rules and all other enabling provisions of the law.
2. The motion which is based on ten(10) grounds and is supported by an affidavit of the Defendant dated 18-3-2025 seeks the following residual orders.
  3. Stay of execution of the judgment delivered on 11-2-2025, pending the hearing and determination of the Applicant's appeal to the Court of Appeal.
  4. Any such directions this Court deems as just and fair.
  5. That the costs of this application be in the cost.
3. The gist of the entire motion is as follows. One, on 11-2-2025, this Court delivered a judgment in this case whereby the Defendant was directed to refund a sum of Kshs. 300,000/= paid by the Plaintiff as purchase price, with interest at Court rates from the date of payment by the Plaintiff until payment in full. Two, the Defendant was dissatisfied with the decision of the Court because she had been sued as the administratrix of the estate of the late Reuben Mushomba, the owner of the suit land known as Maragua Ridge Settlement Scheme No. 53 measuring 4.5 acres. This would be unconscionable because the purchase price was neither paid to the Defendant nor to her father. Three, the Plaintiff is domiciled in the United States of America and his source of income and assets are unknown making it



difficult for the Defendant to recover the decretal amount in case her appeal is successful. Four, there is real and imminent possibility that the Plaintiff will proceed with the execution of the decree against the Defendant personally yet the Plaintiff did not participate in the trial as he was represented by an attorney. Five, the Respondent does not stand to suffer any prejudice if the orders sought are granted and the Defendant is ready to abide by any orders that the Court may issue.

4. The motion is opposed by the Respondent who sworn two(2) affidavits dated 24-4-2025 and 3-7-2025 in which he replies as follows. Firstly, there is no evidence of any appeal filed by the Defendant. Secondly, the Defendant has not been sued in her personal capacity but as the administratrix of the estate of Reuben Mushomba. Thirdly, the application is defective for having been filed in the wrong Court which is now functus officio. For the above and other reasons, the Plaintiff prays for the dismissal of the motion dated 21-2-2025.
5. I have carefully considered the motion in its entirety including the affidavits , the grounds, the written submissions and the law cited therein. I find that the motion has no merit for the following reasons. Firstly, I am not satisfied that the Defendant stands to suffer substantial loss if the motion is not allowed. The decree is for the refund of the purchase price which cannot said to be substantial. The Defendant is not convincing when she says that it is unfair to order that she pays the decretal sum yet she did not receive the same and neither did her father. There is evidence that the said purchase price was received by her mother on behalf of the estate of her father. Since she represents the estate of her father, she cannot escape the responsibility which goes with her representing the estate. Since her parents cannot be sued as they are both said to be deceased, she bears the responsibility of satisfying the decree herein just like she enjoys any assets of her father's estate. The three conditions in Order 42 rule 6(2) of the Civil Procedure Rules of substantial loss, timely filing of the application for stay and security for the due performance of the decree must all be proved before an order of stay is allowed. I find that the application was brought timeously and that the Defendant has committed herself to abide by any conditions that the Court may impose but failure to prove substantial loss in a money decree means that the motion cannot succeed.

For the above stated reasons, I dismiss the motion dated 21-2-2025 with costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 2<sup>ND</sup> DAY OF DECEMBER, 2025.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo.

Plaintiff's Counsel – Mr Rienye

Defendant's Counsel – Miss Gachango

