



Mbugua v Kahinga (Suing as the Administrator of the Estate of Leonard Kahinga Wonyu (Deceased)) (Environment and Land Appeal E071 of 2017) [2025] KEELC 8414 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8414 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E071 OF 2017
JM ONYANGO, J
DECEMBER 3, 2025

BETWEEN

ROBERT KUNGU MBUGUA APPLICANT

AND

MARY WAMBUI KAHINGA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF LEONARD KAHINGA WONYU (DECEASED)) RESPONDENT

RULING

Introduction

1. This Court has been moved vide a Notice of Motion Application dated 23rd June 2025 seeking the following Orders:
 1. Spent...
 2. That this Honourable court be pleased to stay execution of the judgment delivered in SPM ELC Case No. E060 of 2018 at Kikuyu Mary Wambui Kahinga suing as the administrator of the estate of Leonard Kahinga Wonyu versus Robert Kungu Mbugua
 3. That Cost of this application be cost in the course.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Robert Kungu Mbugua sworn on even date.
3. Invoking Order 42 rule 6 of the Civil Procedure Rules, the Applicant beseeches the Court to suspend execution of the impugned decision, asserting that the wheels of enforcement should pause while the appellate Court is afforded its rightful opportunity to scrutinize the judgment under challenge.



4. The Respondent, by way of detailed grounds of opposition and the replying affidavit of Mary Wambui Kahinga sworn on 6th October 2025, contests the application at every turn, urging the Court to dismiss it in its entirety and to visit the attendant costs upon the Applicant.

Issues for Determination

5. Having examined the application, the grounds of opposition, the replying affidavit in opposition and the relevant authorities, the sole issue for determination is whether the Applicants have met the legal threshold necessary for the grant of a stay of execution.

Analysis and Determination

6. Order 42 rule 6(2) of the Civil Procedure Rules, 2010, prescribes the conditions under which a stay of execution may be granted. The provision reads:

“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.”

7. The rule enunciates a dual threshold. First, it requires the Applicant to demonstrate that the refusal of a stay would occasion substantial and irreparable loss, and that the application has been advanced promptly, untainted by undue delay. Second, the provision mandates the furnishing of security to safeguard the eventual enforcement of the decree or order, thereby protecting the interests of the Respondent.
8. The dual requirements underscore the Court’s duty to strike a careful balance between preserving the rights of the Applicant pending appeal and ensuring that the Respondent is not prejudiced by the temporary suspension of execution.
9. In effect, the Court is called upon to exercise its discretion with circumspection, ensuring that equity, fairness, and judicial prudence converge in the assessment of whether a stay should issue.
10. The impugned judgment was delivered on 28th May 2025. In a display of due diligence and alacrity, the Applicant filed the present application for stay of execution on on 23rd June 2025 concurrently lodging their memorandum of appeal.
11. The narrow window between the pronouncement of the judgment and the filing of the application demonstrates a vigilance befitting the demands of justice and removes any suggestion of delay, reflecting a conscientious approach to preserving their appellate rights.
12. Such prompt action satisfies the requirement under Order 42 rule 6(2)(a) of the Civil Procedure Rules that the application for stay be made without unreasonable delay, demonstrating the Applicant’s recognition of the potential for substantial loss should execution proceed unimpeded.
13. The Applicant’s appeal stands in imminent danger of being rendered nugatory if this application is not granted.
14. Yet, the Respondent is indisputably entitled to the fruits of the judgment already pronounced in their favour.



15. After a careful calibration of these competing equities, I allow the application on the express condition that the decretal sum be deposited within 30 days from the date hereof into a joint interest-bearing account to be held either by the counsels for the parties or with the Court.

16. Costs shall abide the outcome of the appeal.

It is so Ordered.

DATED, SIGNED AND DELIVERED, AT THIKA THIS 3RD DAY OF DECEMBER 2025

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J. M. ONYANGO

JUDGE

In the presence of:

1. Miss Kangethe for the Appellant/Applicant
2. Mr. Lutukai for the Respondent

Court Assistant: Hinga

