

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC APPEAL NO. E097 OF 2025.

LAWRENCE OGADAAPPELLANT/RESPONDENT

VERSUS

COLLINS ODHIAMBO NGESA1ST RESPONDENT

SARAH ACHOLA KWACH2ND RESPONDENT

AND

NATIONAL BANK OF KENYA LTD.1ST INTERESTED PARTY

KEYSIAN AUCTIONEERS2ND INTERESTED PARTY

R U L I N G

This ruling is in respect of the application dated 20th November, 2025 which seeks for an order of stay of execution of the judgement dated 28th October, 2025 pending hearing and determination of the appeal.

The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 20th September, 2025.

The Applicant’s case is that the trial court issued a judgement against the Applicant on 28th October, 2025. That the judgement had a permanent injunction restraining the Applicant from dealing

with the suit property where he has erected and established his homestead. That the judgement also directed the Applicant to vacate the suit land with possible eviction to follow in case of default, after 90 days. That the suit property is where the Applicant has established his home and that he stands to suffer irreparable loss if the application is not allowed. That the application was brought in good faith and without unreasonable delay.

Although Counsel for the Respondents informed the court that the Respondents had filed a Replying Affidavit dated 27th November, 2025 in opposition to the application, no such Affidavit is in the physical court file or on the CTS platform as at the date of this ruling. There is no evidence of filing of the same.

The application is therefore unopposed.

The grounds for grant of orders of stay of execution of decree/judgement are provided for in Order 42 Rule 6(2) of the Civil Procedure Rules 2010 it provides as follows:

“No order for stay of execution may be made under sub rule (1) unless-

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

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.”

Firstly, the court must be satisfied that the Applicant will suffer substantial loss if the order of stay of execution is not granted. Substantial loss has been described in Dr. Daniel Chebutuk Rotich – vs- Morgan Kimaset Chebutuk Nakuru H.C.C.C No.368 of 2001 thus:

“Substantial loss is a relative term and more often than not can be assessed by the totality of the consequences which an Applicant is likely to suffer if stay of execution is not granted and the Applicant is therefore forced to pay the decretal sum.”

It was the Applicant’s case herein that the judgement appealed against ordered for his eviction from the suit land among other orders. If the eviction takes place, the Applicant who deposed that he has his home on the suit land will no doubt suffer substantial loss.

The Applicant has undertaken to abide by conditions that the court may direct on security.

I find that the application has merit and hereby allow it in the following terms: -

a) An order of stay of execution of the judgement dated 28th October 2025 in KISUMU CMC EL CASE NO. 13 OF 2020 is hereby granted pending determination of the appeal herein on condition that the applicant deposits in court the sum of Kshs 150,000 (Kenya shillings one hundred fifty thousand only) being security for the due performance of such decree or order as may ultimately be binding on applicant within 45 days hereof failing which the order of stay of execution granted herein shall lapse.

b) Cost in the appeal.

Orders accordingly.

Ruling read and signed at Kisumu and delivered virtually this 4th day of December, 2025.

E. ASATI
JUDGE.

In the presence of:

Maureen: Court Assistant.

Odhiambo Gwada for the Applicant.

Nabifo for the Respondent.