



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Barsolay v Tiony (Environmental and Land Originating Summons  
E007 of 2021) [2025] KEELC 8654 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8654 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2021  
CK YANO, J  
DECEMBER 11, 2025**

**BETWEEN**

**BRADLEY KIPCHIRCHIR BARSOLAY ..... PLAINTIFF**

**AND**

**PETER KIBIEGO TIONY ..... DEFENDANT**

**RULING**

1. The Plaintiff/ Applicant filed the present Application vide the Notice of Motion dated 30<sup>th</sup> June, 2025 against the Defendant/Respondent, seeking the following orders: -
  - i. The Deputy Registrar Environment and Land Court do execute such requisite instruments as are necessary for purposes of enforcing this court's decree issued on 17.01.2024.
  - ii. Costs be in the cause.
2. The application is anchored on the 6 grounds on the face thereof and supported by the applicant's Affidavit sworn on even date.
3. The applicant deponed that vide a judgment issued on 28.09.2023, the honorable court held that he had acquired a portion measuring 13 Acres of the suit land known as Moiben/Kapsumbere Block 2 (Tachasis)/95 by way of Adverse Possession.
4. Consequently, a Decree was thereafter issued on 17.01.2024 and the same was served upon the defendant/respondent, who is the judgment debtor.
5. However, despite being served with the said decree, the respondent has declined to transfer the said portion of land despite several reminders.
6. He therefore contends that it is necessary that the Deputy Registrar executes the relevant transfer instruments to give effect to the court orders and to enable him enjoy the fruits of his judgment.



7. The application was opposed. The defendant/respondent filed a Replying Affidavit sworn and dated 22<sup>nd</sup> September, 2025. He dismissed the application as being frivolous, vexatious, scandalous and the same ought to be dismissed with costs.
8. It was his claim that there is a pending appeal in the Court of Appeal vide the proceedings known as Eldoret Cocoa E006/2024 which is active and hence no transfer of the suit property should be done.
9. It is further his claim that if the orders sought in the present application are granted and the suit land is transferred and registered in the name of the applicant, the appeal may be rendered nugatory and an academic exercise.
10. It is the respondent's contention that the appeal raises weighty and arguable points of law and fact.
11. He deponed that until the pending litigation is concluded, neither party can deal with the suit land in a manner that prejudices the other. It is his contention that the doctrine of *lis pendens* vests the court with control over the subject land until final determination.
12. He relied on the provisions of Article 50(1) of *the Constitution* which guarantees every party the right to a fair hearing and which in the instant case includes an opportunity to have the appeal determined before irreversible steps are taken.
13. He maintained that the application had been made in bad faith with an intention to frustrate him and defeat justice. He thus urged the court to stay any execution steps already taken and restrain any further steps of execution to prevent the appeal being rendered nugatory.
14. In conclusion, he urged the court to dismiss the present application for being premature, vexatious and intended to defeat the pending appeal.
15. The applicant filed a Supplementary Affidavit dated 03.10.2025 in response to the averments made in the replying affidavit pursuant to the leave granted on 30.09.2025.
16. He deponed that the respondent had applied for stay of execution pending appeal but the prayer was disallowed in the ruling delivered on 15.02.2024.
17. He further maintained that the existence of an appeal is not a basis to stay execution of the decree appealed from.
18. The application was canvassed by way of written submissions. The plaintiff/applicant filed his submissions dated 22.10.2025 while the defendant/respondent filed his submissions dated 04.11.2025 together with authorities which I have read and duly considered.

**Analysis and Determination:**

19. I have carefully considered the grounds in the Notice of Motion Application, the Supporting and Supplementary Affidavits and Replying Affidavit in response thereto as well as the rival submissions and the various authorities cited. Consequently, the following issues arise for determination: -
  - i. Whether the application is merited to warrant the grant of the orders sought
  - ii. Whether the doctrine of *lis pendens* is applicable in the instant case
  - iii. Who shall bear the costs of the Application.



**Whether the application is merited to warrant the grant of the orders sought;**

20. The applicant herein is seeking to have the Deputy Registrar, Environment and Land Court to execute the necessary instruments for purposes of enforcing the court's decree issued on 17.01.2024.
21. He contends that vide a judgment issued by this court (differently constituted) on 28.09.2023 in his favor, it was held that he had acquired a portion of the suit land measuring 13 Acres by way of Adverse Possession. A decree was subsequently issued on 17.01.2024.
22. Further, it is his claim that the respondent's application seeking stay of execution of the judgment of the court pending appeal was dismissed vide a ruling of the court delivered on 15.02.2024. That despite the respondent being served with the said decree, he has refused and/or declined to sign the relevant transfer forms in enforcing the judgment of the court hence the instant application.
23. The respondent on the other hand contends that there is a pending appeal in the court of appeal vide Eldoret Cocoa E006/2024 and hence the execution of the decree should be stayed and/or restrained to prevent the appeal from being rendered nugatory. He relied on the doctrine of *lis pendens* and urged the court restrain the transfer of the suit land or any further execution process by the applicant until the final determination of the pending appeal.
24. The question that therefore arises is whether this court can grant the orders sought and direct the Deputy Registrar to execute all the necessary instruments for purposes of transferring and registering a portion of the suit land measuring 13 Acres, in the name of the plaintiff/applicant in enforcing the judgment and decree of this court.
25. Order 42 Rule 6 (1) of the Civil Procedure Rules provides that: -

“6.

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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.” (emphasis mine)

26. From the above provision, it is clear that no appeal or second appeal shall operate as a stay of execution except where a formal application for stay of execution pending appeal has been filed, heard and determined. The respondent herein filed an application dated 23.10.2023 seeking the stay of execution of the judgment of this court delivered on 28.09.2023 pending appeal.
27. It is admitted that the application for stay was heard and determined vide a ruling issued on 15.02.2024 by my predecessor Hon Justice E. Obaga. The effect of the said ruling was to dismiss the respondent's application for stay of execution pending appeal for lack of merit.



28. In essence therefore, there are no orders for stay of execution or otherwise, stopping the execution of the judgment and decree issued on 28.09.2023 and 17.01.2024 respectively, in favor of the applicant, issued either by this court or the Court of Appeal. Once stay is denied, the decree holder (plaintiff herein) is therefore at liberty to proceed with execution.
29. It is trite law that a successful party is entitled to the fruits of his judgment. The filing of the appeal at the Court of Appeal as evidenced by the Memorandum of Appeal dated 19.10.2023 and annexed in the Replying Affidavit, does not automatically operate as stay of execution.
30. It is clear that this court has the powers to allow execution where no stay orders exist and the existence of an appeal is not an automatic bar to execution of a judgment or decree.
31. However, the respondent herein has raised and seeks to rely on the doctrine of lis pendens, that owing to the existence of the pending appeal Eldoret Cocoa No. E006 of 2024, the suit property cannot be transferred and the execution of the decree herein should therefore await the finalization of the pending appeal.
32. Therefore, before concluding this issue on whether the orders sought should be granted, this court must first determine whether the doctrine of lis pendens raised by the respondent is applicable in the instant case.

**Whether the doctrine of lis pendens is applicable in the instant case;**

33. As stated hereinabove, the respondent has urged the court to rely on the doctrine of lis pendens and find that the application has been filed prematurely and dismiss the same with costs.
34. In response to the doctrine of lis pendens raised by the respondent, the applicant stated that the doctrine only applies in the case of alienation of the subject matter before determination is made. He maintained that in the instant case, there is a decree issued by the court which clearly allows the applicant to proceed with execution of the orders made. He reiterated that Order 42 Rule 6 of the Civil Procedure Rules clearly stipulates that an appeal does not operate as stay of execution of the decree appealed from.
35. Black's Law Dictionary 9<sup>th</sup> edition, defines lis pendens as the jurisdictional, power or control acquired by a court over property while a legal action is pending.
36. The purpose of the doctrine was explained in the case of *Mawji v US International University & another* [1976] KLR 185 by Madan, J.A. as follows:-

“The doctrine of lis pendens under Section 52 of TPA is a substantive law of general application. Apart from being in the statute, it is a doctrine equally recognized by common law. It is based on expedience of the court. The doctrine of lis pendens is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice. It therefore overrides, Section 23 of the RTA and prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other...”
37. From the above, the doctrine of lis pendens is a common law principle, which grants the court the powers over a suit property pending active litigation over the same property. The purpose of the said doctrine is therefore to preserve the suit land until the finalization of ongoing litigation before a court.
38. While it is not in dispute that there is a pending appeal at the Court of Appeal vide Eldoret Cocoa No. E006 of 2024, there is no case pending before this court. Being guided by the above case law and



the principles governing the applicability of the doctrine of lis pendens, it is the finding of this court that the said doctrine is not applicable in the present application since there is no pending suit in this court. The court has also noted that the application herein is seeking an order in furtherance of the implementation of the decree herein. There is no order in place staying the execution of the decree herein.

39. Consequently, having held that the doctrine of lis pendens is not applicable herein, and as no stay orders exist, it follows that the orders sought in the present application can be granted. I therefore find that the application is merited and is hereby allowed.

**Who shall bear the Costs of the application;**

40. The general rule is that costs follow the event unless the court directs otherwise.
41. In this case, having held that the present application is merited, it is the finding of this court that the Plaintiff/Applicant is entitled to the costs of the application.

**Conclusion:**

42. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 30<sup>th</sup> June, 2025 is merited and is hereby allowed with costs to the Plaintiff/Applicant.
43. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. C. K. YANO**

**JUDGE**

Ruling delivered in the presence of: -

Ms. Koech for Respondent.

Mr. Kipnyekwei for Applicant.

Court Assistant – Edwin

