

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL CASE NO.1245 OF 2015**

**DELMONTE KENYA LIMITED.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**GOSHEN GARDENS LIMITED.....1<sup>ST</sup> DEFENDANT**

**PIONEER INTERNATIONAL SCH. LTD.....2<sup>ND</sup> DEF./APPLICANT**

**RULING**

1. The 2<sup>nd</sup> Defendant has moved this court vide the application dated 17<sup>th</sup> September, 2025, seeking an order of stay of execution of the judgment pending hearing and determination of its appeal, Nairobi Civil Appeal E734 of 2025.
2. The 2<sup>nd</sup> Defendant also prays for stay of execution or sentencing of the Defendant's trustee Peter Kihara Munga and if already sentenced, to suspend the implementation of such sentence arising from ruling dated 8<sup>th</sup> November, 2017. It also prayed for any other or such orders as the court shall deem fit.
3. The application is premised on the grounds listed on its face inter alia, that on the 17.7.2025, the Applicant filed and served its Notice of Appeal.

It also wrote to the Deputy Registrar to request for typed proceedings and judgment. Additionally, that on receipt of the typed proceedings, the Applicant duly filed and served the intended appeal.

4. The 2<sup>nd</sup> Defendant/Applicant avers that their appeal has good chances of succeeding. He proceeded to list their grounds of appeal lodged before the Court of Appeal which grounds are not necessary for the purposes of determination of this application.
5. The application is opposed by the Plaintiff vide grounds of opposition dated 21<sup>st</sup> October, 2025. The Plaintiff impleads that the Applicant has not met the threshold for granting stay of execution under order 42 rule 6 of the Civil Procedure Rules. That they have not shown sufficient cause since they want to continue trespassing on the suit property as it does not have any proprietary rights over the same.
6. The Plaintiff also pleads that the Applicant will not suffer any substantial loss as it has not demonstrated any improvements they have made on L.R. No 12157/2. Further, that the Applicant was always aware that the Plaintiff challenges its occupation and it follows that the Applicant ought not to have made any improvements on the stated land parcel. Lastly, that the Applicant has the option of transferring the school and staff to a different property.

7. The application was prosecuted by way of oral submissions. Mr. C.N Kihara submitted that if the stay is not granted, the right of appeal of the 2<sup>nd</sup> Defendant would be rendered nugatory. That the school includes students who were admitted in December, 2015 and the judgement of this court does not affect them. He stated that he was freezing prayer 4 seeking to stay the sentencing for now.
8. For the Plaintiff, Mr Lawson Ondieki learned Counsel submitted that the filing of an appeal does not act as an automatic stay. That an Applicant must demonstrate sufficient cause, substantial loss and for the security of costs. He reiterated that the Applicant has no interest in the suit property but now seeks a restraining order against the registered owner from taking possession.
9. He argued that in the judgment, the best interest of the children was taken care of when the Applicant was granted 5 months to make adequate arrangements for the relocation of the school. He also stated that there was no evidence annexed to show Kshs 80 million had been invested in the suit premises by the Applicant. Mr Ondieki added that, in the event of such improvements, the Applicant was at liberty to move with its assets.
10. On the balance of convenience, Mr Ondieki stated that it has been 10 years of illegal occupation and the Applicant paying the same rent. Thus, the Plaintiff is suffering unjust compensation from its property.

11. In brief response, the Applicant stated that the details of their improvements on the land were defined in the application filed before the case was heard and determined. Further, that five (5) months is a short period within which to move a school. On rental income, Mr Kihara submitted that the Plaintiff did not make a case for rent payable. He urged the court to exercise discretion in their favour.

**Analysis and Determination:**

12. The answer to the question of whether or not to grant a stay of execution of a decree is found in the provisions of Order 42 Rule 6(2) and (4) of the Civil Procedure Rules. The threshold is the filing of a notice of appeal, and proof of sufficient cause and substantial loss in the event a stay is not granted.

13. In this instance, there is no dispute that a notice of appeal was lodged within time and the Applicant has gone ahead to file the substantive appeal before the Court of Appeal. It is not within the province of this court under Rule 6(4) while considering stay of execution to discuss the question of merit or otherwise of such appeal. Therefore, I will not consider the grounds of appeal listed or the absence of the lease agreement between the Plaintiff and the Applicant.

14. Following the proof of filing of notice, the Applicant argues that if stay is not granted, its right of appeal will be rendered nugatory. Secondly, the

five months granted in the judgement was insufficient time to relocate a school and finally, they have massively invested in the suit premises.

15. The Plaintiff contradicted these arguments, stating that the time provided was sufficient, the Applicant was always aware they (Plaintiff) wanted possession of their land and that the Applicant is free to take away their investments.

16. I have analysed the parallel arguments and I am persuaded that the right of appeal of the Applicant needs to be protected in the same way that the right to property of the Plaintiff should. The Applicant has also shown that it is likely to suffer substantial loss if the stay is not granted on account of timelines required to relocate a school (although it did not say how long) and the likely loss of some of the investments which may be damaged in the process of relocation.

17. Again, in weighing the interests of the Applicant, I am alive to the interests of the Plaintiff/Respondent, who has a decree that it stated it had waited 10 years to get.

18. Therefore, in balancing the scales of justice in the interest of both parties and taking note that an appeal has already been filed, I will maintain the status quo but for a limited period of time. Consequently, I do grant the Applicant an order of stay of execution for a period of Six (6) months

from the date of this order. In the event their appeal will not have been concluded, they can move the Court of Appeal for further orders.

**Dated, Signed and Delivered at Nairobi this 11<sup>th</sup> day of December, 2025**

**A. OMOLLO**

**JUDGE**

ORIGINAL