



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA E029 OF 2025

JACKSON WARUI ELIAS.....1ST APPELLANT
HUMPHREY KANG'ARU.....2ND APPELLANT
AND
JOHNSON KAMAU HUNJA.....RESPONDENT

RULING

- 1) This Ruling is on the notice of motion dated 23-7-2025. The Motion which is by the Appellants seeks the following residual orders.
 3. **Stay of execution of the judgment delivered in Murang'a MCELC 13 of 2020 by Honourable M.E. Analo and maintenance of status quo pending the hearing and determination of the intended appeal.**
 4. **Costs of the application.**
- 2) The motion which is brought under **Orders 22 rule 1, 42 rule 6(1) 51 rules 1 and 3, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Article 159 of the Constitution and all enabling provisions of the law is based on eight (8) grounds and is supported by an affidavit of the 2nd Appellant dated 23-7-2025.**
- 3) The gist of the grounds and the affidavit is as follows. Firstly, the lower court delivered its judgment on 3-7-2025 and made an order for specific performance whose effect it to transfer 2 acres of the suit land to the Respondent. Secondly, the Appellants are dissatisfied with the judgment of the lower court. Thirdly, there is genuine apprehension on the part of the Appellants of imminent destruction of property by the Respondent. Fourthly, the Respondent will not be prejudiced because he lives on a 30x30 feet plot within the land. Finally the Respondent is hostile to the Appellants and he has been engaged in acts of wanton destruction of tress on the suit land.

4) The motion is opposed by the Respondent who has sworn a replying affidavit dated 22-9-2025 in which he replies as follows. One, the Respondent occupies two acres of L.R. No. Loc.15/Kigongo/190 measuring 2 acres with a clear distinct boundary where he has constructed a home. He does not occupy the 30x30 feet plot as alleged by the Appellants. Secondly, he has no objection to that status quo being maintained. Finally, the application is materially misconceived, inept and an abuse of the Court process and ought to be dismissed.

5) I have considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit and the available record. It is disputed how much of the suit land is occupied by the Respondent. While the Appellant claim that the Respondent occupies only 30x30 feet, he counterclaims by saying that he occupies two acres.

Before a Court can issue an order of stay of execution under **Order 42 rule 6(2)** of the **Civil Procedure Rules**, the Applicant must satisfy three (3) conditions which are proof of substantial loss, filing the application without unreasonable delay and providing security for the due performance of the decree.

6) The Applicants have not demonstrated that they stand to suffer substantial loss if the application is not allowed. It is not likely that the Respondent who is successful litigant in the lower Court would suddenly wantonly destroy property that he has declared as the owner of. He would have no reason to engage in such a wasteful exercise. Even though the other conditions may be easily satisfied by the Appellants, the fact that they are unable to satisfy all the three (3) together means that the motion cannot succeed. The conditions in **Order 42 rule 6** are conjunctive not disjunctive.

7) For the above stated reason, I find **no merit** in the motion dated 23-7-2025. I **dismiss** the said motion. Costs in the cause

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 17th day of December, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of :-

Mwangi Njonjo - Court Assistant
Appellant's Counsel – Mr Kimemia
Respondent's Counsel – Mr Morigori