



James Bichage Kenyariri v Equity Bank Kenya Limited & 2 others (Environment and Land Appeal E005 of 2025) [2025] KEELC 8677 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8677 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND APPEAL E005 OF 2025**

M SILA, J

DECEMBER 11, 2025

BETWEEN

JAMES BICHAGE KENYARIRI APPELLANT

AND

EQUITY BANK KENYA LIMITED 1ST RESPONDENT

VERONICAH K. RANGI T/A NIRA AUCTIONEERS 2ND RESPONDENT

BONDA WELFARE ASSOCIATION 3RD RESPONDENT

RULING

1. There are two applications before. The first application is one dated 21 July 2025 filed by the 3rd respondent in this appeal. The second application is that dated 25 July 2025 filed by the 1st respondent in this appeal. Both applications seek stay of execution of the judgment delivered on 16 July 2025 pending hearing and determination of an appeal that has been preferred before the Court of Appeal.
2. To put matters into context, the appellant was the erstwhile owner of the land parcel Nyaribari Chache/B/B/Boburia/11141 (the suit property). He charged this property to the 1st respondent to secure some financial accommodation. He fell into arrears and the 1st respondent wished to exercise her statutory power of sale. The 1st respondent appointed the 2nd respondent, Nira Auctioneers, to sell the property and the 2nd respondent scheduled an auction sale for 24 September 2021. It was claimed by the 1st respondent that the property was sold to the 3rd respondent at the auction sale and the suit property was duly transferred to the 3rd respondent.
3. The appellant contested that sale contending inter alia that no sale took place. He proceeded to file the suit Kisii MCELC NO. E117 OF 2021 before the Chief Magistrates' Court at Kisii to challenge that sale. The 1st respondent filed defence asserting that the sale was above board. The 2nd respondent did not enter appearance. The 3rd respondent filed defence and counterclaim. She asserted being the lawful



- purchaser at the auction having presented a bid of Kshs. 6,000,000/=. In the counterclaim she sued the appellant for trespass and wished to have him permanently restrained from the suit property.
4. The case was heard and judgment delivered on 17 October 2024. The trial Magistrate found the sale to be lawful and held that the 3rd respondent held a title that could not be impeached. She held that the appellant was in trespass and awarded the 3rd respondent general damages of Kshs. 150,000/= against the appellant. She however found that the sale was at an undervalue and awarded the appellant Kshs. 1 million as damages. She awarded half costs of the suit to the appellant payable by the 1st respondent.
 5. Aggrieved, the appellant preferred an appeal to this court urging inter alia that the trial court was wrong in finding the sale to be lawful. I heard the appeal and delivered judgment on 16 July 2025. In my judgment, I was not persuaded that there was ever any auction held on 24 September 2024 as alleged, or if ever there was one, then it was not held at the advertised venue. I proceeded to set aside the judgment of the trial court and nullified the title of the 3rd respondent. I ordered the parties to be returned to the position that they were prior to the date of the purported auction sale meaning that the property would be returned to the proprietorship of the appellant with the charge in situ, and the amounts owing at the time of the auction sale being the amounts due at the time of judgment. I held that the 3rd respondent could engage the 1st respondent on refund of whatever she paid the 3rd respondent on the purported purchase of the property. On costs, I awarded costs of the suit before the lower court and before this court to the appellant jointly and/or severally against the respondents.
 6. The 1st and 3rd respondents are aggrieved by the judgment and wish to appeal to the Court of Appeal. A notice of appeal was indeed filed. They are now before court on the two applications seeking stay pending appeal.
 7. In the application dated 21 July 2025, filed by the 3rd respondent, the 3rd respondent appreciates that the consequence of the judgment of this court is that her title has been extinguished. It is claimed that the 3rd respondent undertook substantial developments on the suit property to increase its value to Kshs. 80 million and that the appeal may be rendered nugatory if the appellant disposes of the suit property. She avers that she stands to lose possession of the property and the revenue generated on the improved value of the premises. It is contended that there is no guarantee that in the event of a successful appeal, the appellant can refund the income drawn from the investment. She avers that the appellant may be motivated to offset his loan account, obtain an unencumbered title, and sell the property. She is ready to abide by any security that the court may direct.
 8. In the application dated 25 July 2025, filed by the 1st respondent, the 1st respondent contends, through an affidavit sworn by Charles Gitau, that the appellant may reclaim the property, take possession, or transact with it thus defeating the bank's security. It is deposed that the Kshs. 1,000,000/= previously paid to the appellant pursuant to the judgment of the trial court may not be recoverable.
 9. The appellant filed a replying affidavit. He deposes that it defeats logic that the 1st respondent is seeking stay while demanding that he pays the outstanding amount on the loan. He avers that he is bound to suffer further prejudice and loss as his property was illegally sold in 2021 and he has been denied the rent proceeds. He deposes that in the event that the court is to allow the application, he should be allowed to collect the rent and the applicant should deposit an amount equivalent to the current value of the property pending the outcome of the appeal.
 10. I have considered the two applications alongside the submissions made by counsel in writing and orally in court.
 11. This is an application for stay pending appeal and I stand guided by Order 42 Rule 6(2) which provides as follows :



- (2) No order for stay of execution shall be made under subrule (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.

From the foregoing, it will be seen that the court needs to be satisfied of three things, being :

- i. That the applicant stands to suffer substantial loss.
 - ii. That the application has been made without unreasonable delay.
 - iii. That there is provided such security for the due performance of the decree in the event that the applicant loses the appeal.
12. I do not think that there has been delay in filing the two applications and I will only concern myself with the questions of substantial loss and security.
13. In assessing substantial loss and security, each case needs to be considered on its own peculiar facts. In our case, the present position of the suit property is that it is registered in the name of the 3rd respondent. Prior to the registration of the 3rd respondent as proprietor, the suit property was registered in the name of the appellant and encumbered with a charge in favour of the 1st respondent. If the judgment is to be executed, in so far as title is concerned, then the title of the 3rd respondent will be nullified and the property will revert back to the registration of the appellant encumbered by the charge in favour of the 1st respondent. I have no issue with maintaining the property in the current registration status pending the hearing and determination of the appeal. I will however order the 3rd respondent not to enter into any sale, charge, or any other encumbering dispositions regarding the suit property.
14. In his submissions, Mr. Bwire, learned counsel for the 1st respondent, did submit that his client has no problem with maintaining the loan account as it is without charging any interest. I will order that status to be maintained pending the hearing and determination of the appeal.
15. The main bone of contention is on possession of the property and on the proceeds of rent. When I heard the application, Mr. Gichaba, learned counsel for the appellant, urged that the property fetches Kshs. 220,000/= per month and submitted that his client should be allowed to enjoy the proceeds of rent given that he is the successful litigant. On his part, Mr. Jaoko, learned counsel for the 3rd respondent submitted that the property has 22 rooms, of which 20 are rented out at Kshs. 3,000/= per month. He submitted that the income is Kshs. 540,000/= per year and that his client is willing to open a joint interest earning account into which he can deposit the rent accruing, on a monthly basis, pending the hearing and determination of the appeal. He undertook that his client is not going to interfere with the property or destroy it.
16. I find the two amounts of rent presented by Mr. Gichaba and Mr. Jaoko to be poles apart and I am unclear on the rent that the premises fetches. I further observe that despite both parties wishing to be in possession of the suit property, other than merely saying that they can make good the loss to the other, there is no real offer of security to cover any eventuality on the appeal.
17. I am alive to the position that a successful litigant ought to be allowed to enjoy the fruits of his judgment, but given the lack of clarity on the amounts that a successful party is liable to lose, and the fact that there is no tangible security presented to secure any successful party depending on the outcome of the appeal, my view is that it is best that the property be managed by a reputable estate agent, who can manage the property and deposit the rent proceeds into a joint interest earning account



of counsel for the appellant and the 3rd respondent (or in court) less any tax on rental income and management expenses.

18. I will therefore order as follows :

1. That the property be managed by a reputable and licenced estate agent to be agreed by counsel for the appellant and 3rd respondent within the next 7 days.
 2. That if the appellant and the 3rd respondent are unable to agree on the estate agent, the Deputy Registrar to appoint one in his discretion.
 3. That the appointed estate agent to ensure that the suit property is properly maintained, kept in good repair, and is tenanted at the best rent receivable.
 4. That the tenants in the premises be deemed as tenants of the 3rd respondent and the rental income will be deemed as rental income of the 3rd respondent for purposes of payment of rental income tax. The rental income tax be paid to Kenya Revenue Authority in the usual manner.
 5. That counsel for the appellant and the 3rd respondent to open a joint interest earning account into which the rent proceeds, less tax on rental income, management fees, and repairs and maintenance costs, will be deposited, within the next 7 days.
 6. That if no account is opened, then the monies above be deposited in court.
 7. That the suit property be deemed to be in the joint possession of the appellant and the 3rd respondent and either is at liberty to inspect the property upon consultation with each other and with the management agent.
 8. That the estate management agent to furnish the court , through the Deputy Registrar, with a monthly account and also give an update of the status of the suit property.
 9. That if the 3rd respondent succeeds on appeal, the monies deposited be released to him but if the 3rd respondent fails on appeal, the monies deposited be released to the appellant.
19. There is one more thing, and that regards security on costs. The costs are yet to be taxed. The same may be taxed, and upon taxation, the taxed sum be deposited in a joint interest earning account to be opened in the names of counsel for the appellant, the 1st respondent and 3rd respondent within 30 days of taxation. If no monies are deposited, the appellant is at liberty to execute for the taxed costs.
20. The costs of this application will abide the outcome of the appeal.
21. Orders accordingly.

DATED AND DELIVERED THIS 11 DAY OF DECEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Gichaba for the appellant

Mr. Bwire for the 1st & 2nd respondents

Mr. Jaoko for the 3rd respondent.

