

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCA NO. 577 OF 2016

JIMBEN INVESTMENTS LIMITED - APPLICANT

VS

THE REGISTRAR OF TITLES,

MINISTRY OF LANDS

RESPONDENT

NATIONAL LAND COMMISSION

RESPONDENT

KENYA AIRPORTS AUTHORITY

RESPONDENT

THE HON ATTORNEY GENERAL

RESPONDENT

- 1ST
- 2ND
- 3RD
- 4TH

RULING

(In respect of Applicant's application dated 10/7/25)

1. Before me is an application filed by the Plaintiff/applicant dated 10/7/25 seeking an order to stay the execution of the judgment delivered on 19/6/25, along with all related orders and proceedings arising therefrom, pending the hearing and determination of the Plaintiff's intended appeal.
2. The application is based on the grounds attached thereto and the supporting affidavit sworn on the same date by **Shital Bhandari**. Briefly, the deponent states that the applicant is aggrieved by the judgment of this court aforesaid, which ordered the revocation

and/or cancellation of the plaintiff's title in respect to the suit land and awarded costs of the suit and the counterclaim against the applicant. That the applicant has therefore filed an appeal in the Court of Appeal. In this regard, a notice of appeal together with a memorandum of appeal were annexed to the instant application.

3. He deposes that the appeal raises significant issues of fact and law with a likelihood of success; therefore, it should be given the chance to prosecute it on its merits before the appellate court. It is apprehensive that unless the orders are granted, the 3rd Respondent might proceed to execute the judgment, which could lead to the cancellation of the title at the Lands Registry, consequently extinguishing its legal and proprietary interests in the suit property to its detriment and rendering the substratum of the appeal nugatory or altered, thus defeating the ends of justice.
4. Responding to the application, the 3rd Respondent filed grounds of opposition dated 7/8/25 on the following grounds: The instant application lacks merit and is merely intended to deny the 3rd Respondent access to the fruits of its judgement; the intended appeal lacks merit and has no chance of success, and granting the orders would be an act in futility; the applicant has not met the requirements under Order 42 rule 6(2) of the Civil Procedure Rules; no substantial loss has been proven; the applicant has not offered any security for costs; finally, the application is an abuse of court process and ought to be dismissed with costs.
5. In a further affidavit supporting the current application, sworn on 2/10/25, **Shital Bhandari** stated that after filing the application, the applicant has now filed an appeal in the Court of Appeal

under **COA No E709 of 2025 - Jimben Investments Limited Vs Chief Land Registrar & 3 others.**

6. On 16/9/25, parties elected to canvass the application by way of written submissions. The applicants' submissions are dated 2/10/25, while the 3rd Respondent's submissions are dated 21/10/25. I have read and considered the respective submissions.
7. None of the other parties filed any responses to the application nor written submissions.

Analysis and determination.

8. Having considered the application, the responses and the rival submissions, the key issue for determination is whether the application has merit.
9. Generally, a stay of execution is provided for under Order 42 Rule 6 of the Civil Procedure Rules, which states as follows:
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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, an 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.

(2) No order of stay of execution shall be made under Sub-rule (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 undue 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.”

10. In considering an application for stay of execution, this court is guided by the case of **Butt -vs- Rent Restriction Tribunal (1982) KLR 417** where the Court of Appeal set the following guidelines:

“The power of the court to grant or refuse an application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal. The general principle in granting or refusing a stay is; if there is no overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s decision. A judge should not refuse stay if there are good grounds for granting it merely because in his opinion a better remedy may become available to the Applicants at the end of the proceedings. The court in exercise of its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements.”

11. The grant of an order of stay of execution is a discretionary one. In the case of **RWW -vs- EKW (2019) eKLR** the Court held that: -

“...the purpose of an application for stay of execution pending an appeal is to preserve the subject in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and The appeal if successful is not rendered nugatory. However, in doing so the court should weigh the right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of damages.”

12. The first issue the court ought to determine is whether the applicant has demonstrated that it stands to suffer Substantial loss if the orders sought are not granted. The concept of substantial loss was clearly explained in the case of **James Wangalwa & Another vs Agnes Naliaka Cheseto [2012] eKLR: -**

"No doubt in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other

factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

13. The Applicant contends that the 3rd Respondent is likely to execute the judgement thus leading to the revocation and cancellation of the title. That in addition, there is a likelihood that third-party rights may be created in the subject property in the intervening period to the detriment of the applicant.
14. The issue of substantial loss was defined in the case of **Kenya Shell Limited -vs- Benjamin Karuga Kibiru & Another [1986] eKLR**, where it is held as follows:

“Substantial loss in its various forms is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the Respondents should be kept out of their money”.
15. The Court is therefore called upon to balance the rights of the successful party so as not to hinder the enjoyment his fruits of judgment, and those of the Appellant, who has a right of appeal and whose appeal may succeed and be rendered nugatory if a stay of execution is not granted.
16. In this case, the court finds that the Applicant has provided sufficient evidence that it is likely to suffer substantial loss if the application is not granted. It is the irreparable damage that must

be prevented, which includes eviction and demolition of the applicant's structures on the property.

17. From the record, the judgment was delivered on 19/6/25, and the instant application was filed on 10/7/25 within a reasonable time.

18. On the third condition of Security of costs, the purpose of security was explained in the case of **Arun C. Sharma vs Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others [2014] eKLR** the court stated: -

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor.....Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 Rule 6 of the Civil Procedure Rules acts as security for the due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.”

19. Based on the foregoing, I shall allow the said application on the following terms;

a. There be a stay of the execution of the Judgment delivered by this Court on 19/6/25 pending the hearing and determination of the appeal.

b. To cover the security for costs related to the enforcement of any decree or order that may ultimately be binding on it, I

- order the applicant to deposit the sum of Kenya Shillings Five Hundred Thousand Only [Kshs 500,000/-] within the next 30 days into a joint interest-earning account in the names of both counsel for the Applicant and the 3rd Respondent.
- c.** In default of b) above, the orders granted herein shall lapse automatically.
 - d.** The costs of the application are in favour of the 3rd Respondent.
20. It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 11TH
DAY OF DECEMBER 2025 VIA MICROSOFT TEAMS.**

J. G. KEMEI
JUDGE

Delivered Online in the presence of:

1. Mr Lorot for the Applicant
2. N/A for the 1st and 2nd Respondents
3. Ms Wachanga for the 3rd Respondents
4. N/A for the 4th Respondent
5. CA- Ms Vvette Njoroge