

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 98 OF 2016

EMMANUEL LOKWDINGOLE
(Suing as the personal representative of the estate of
LOKENDINGOLE LIPOPUS
(DECEASED)-----PLAINTIFF/RESPONDENT

VERSUS

LOKOYE ARIONGONYANG-----1ST
DEFENDANT/APPLICANT

EMMANUEL LOLINGANYANG-----2ND
DEFENDANT/APPLICANT

THOMAS JELIM-----3RD
DEFENDANT/APPLICANT

RULING

1. This court is asked to stay the execution of its decree and or judgment of **11/6/2025**, and any other proceedings in this file, and to leave be granted to the applicant to amend the notice of appeal, and the letter dated **18/6/2025**, to substitute the 1st defendant with his legal representative, pending this application and the intended appeal at the Court of Appeal.

2. The grounds are that the applicants have filed a notice of appeal and but have yet to file a memorandum of appeal and the record of appeal.
3. The applicants depose that they will be evicted if stay orders are not granted, the appeal, which has high chances of success, shall be overtaken by events. Again, the applicants depose that they stand to suffer irreparable loss if evicted, thus the status quo should be maintained. Annexed to the affidavit in support are copies of the authority to plead, the notice of appeal, draft memorandum of appeal, grant, death certificate, amended letter, and notice of appeal as annexures marked **TJ-1-5**.
4. The respondent opposes the motion vide a replying affidavit dated **24/10/2025**. He deposes that he is entitled to enjoy the fruits of his judgment, having lost the use of the suit land for the last **10** years, that execution is a lawful process, and the applicants have failed to show how they stand to suffer irreparable harm or the appeal be rendered nugatory.
5. Further, the respondent deposes that the applicants have not explained the inordinate delay of **3** months; it is not sufficient to state that they will deposit security for costs, the court lacks jurisdiction to grant leave to

amend the notice of appeal, and that there are sufficient reasons demonstrated to warrant the orders sought. The respondent deposes that he has no intention to dispose of, or affect the condition of the suit land adversely.

6. Through written submissions dated **24/10/2025**, the respondent submits that under **Order 42** of the Civil Procedure Rules, the applicants are not entitled to a stay of execution pending appeal, given that they have not met the threshold under **Order 42 Rule 6** thereof, and that stay is discretionary.
7. The respondent submits that the delay of **99** days is inordinate; the applicants have failed to demonstrate substantial loss and provide security for costs and *mesne* profits. Reliance is placed on **Jaber Mohsen Ali & another -vs- Priscillah Boit & another [2014] KEELC 132 (KLR)**, where the cited **Christopher Kendagor -vs- Christopher Kipkorir Eldoret E&L 919 of 2012, Jonathan Kiprotich Barsulai -vs- John Kiprop Chemweno & 7 others [2018] KEELC 4171 (KLR)**, and **James Wangalwa & another -vs- Agnes Naliaka Cheseto [2012] eKLR**.
8. To stay the execution of a decree is a discretionary power exercised in favor of a party who has satisfied the conditions set in **Order 42** of the Civil Procedure Rules.

The application must be filed timeously. Any delay of even one day can be fatal. It has to be explained. Substantial loss is the cornerstone of stay orders. It has to be demonstrated with cogent and tangible evidence on how the substratum of the appeal shall dissipate or change in the absence of any stay orders. It is not enough to allege substantial loss without proof. Security for the due realization of the decree, should the appeal not succeed, has to be offered and stated. Exceptional circumstances must be shown why it is in the interest of justice to grant the orders sought.

- 9.** Applying the foregoing principles as enunciated in the caselaw cited by the respondent, I find the applicants have failed to substantiate the conditions of stay. The delay of **3** months is inordinate and has not been sufficiently explained. The execution process is lawful in nature. It cannot amount to substantial loss. Rendering a non-filed appeal nugatory is impossible in the circumstances. Security has not been mentioned, let alone being offered, which is commensurate with the decree. The other prayers in the application have no basis set out in the supporting affidavit. The upshot is that the application is dismissed with costs.

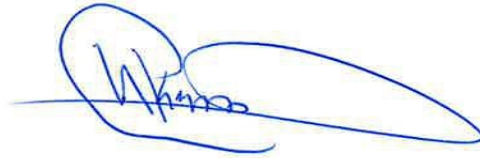
Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 10th day of December 2025.

In the presence of:

Court Assistant - Dennis

Kiarie for plaintiff - present

Okubasu for Khaosa for defendants - present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**