

**REPUBLIC OF KENYA**

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

**ELC CIVIL APPEAL NO.E033 OF 2025**

**TIMOTHY MOTOA.....APPELLANT**

**VERSUS**

**JANE NGINA MULWA.....1<sup>ST</sup>**

**RESPONDENT**

**KAJIADO COUNTY.....2<sup>ND</sup>**

**RESPONDENT**

**CHIEF LAND REGISTRAR, NAIROBI.....3<sup>RD</sup>**

**RESPONDENT.**

*(Being an Appeal against the Judgement of the Hon.  
Esther K. Kimilu (SRM) delivered on 13<sup>th</sup> May, 2025 in  
MCELC NO. E003 OF 2024 - Loiloktok)*

**RULING.**

**1. This Ruling is respect of the Notice of Motion dated 12<sup>th</sup> June 2025 brought under; (Section 3 and 3A of the Civil**

**Procedure Act, Order 42 Rule 6(1), (2) Order 51 Rule 1, Order 22 rule 22 (1) and Rule 25 of the New Civil Procedure Rules and all other enabling provisions of the Law).**

2. It seeks Orders;

**1) Spent.**

**2) Spent.**

**3) THAT this Honourable Court be pleased to order a stay of execution of the judgement and issued by this Honourable court delivered on 13<sup>th</sup> May, 2025 pending the hearing and full determination of the Applicant's Appeal filed in the High court at KAJIADO being ELCA No. E033 of 2025.**

**4) THAT the costs of this Application be provided for.**

3. The grounds are on the face of the Notice of Motion and are set out in paragraphs 1 to 8.

4. The Application is supported by the affidavit of Timothy Motoa, the Appellant herein sworn on the 12<sup>th</sup> June 2025 and a Further Affidavit sworn on the 25<sup>th</sup> September 2025.

5. The application is opposed. There is a Replying Affidavit sworn by the 1<sup>st</sup> Respondent.
6. The Notice of Motion was canvassed by way of written submissions.
7. I have considered the Notice of Motion, the affidavits in support, the response thereto, the rival submissions and the authorities cited.

The issues for determination is whether this Application is merited.

8. **Order 42 rule 6(2) of the Civil Procedure Rules** provides that;

**“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”.**

9. It has been repeatedly affirmed in numerous judicial decisions that the purpose of an application for stay of

execution pending appeal is to protect the subject matter in dispute and ensure that the Appellant's right to appeal is not compromised.

10. In the case of **RWW VS. EKW (2019) KEHC 6523 KLR** the court stated thus;

***“The purpose of an application for stay of execution pending appeal is to preserve the subject matter 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.”***

11. Similarly in the case of **James Wangalwa & Another Vs. Agnes Naliaka Cheseto (2012) Eklr** the court held that;

***“.....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”.***

12. I have taken into consideration the circumstances of this case. I agree with the Appellant's submissions that the execution of the judgement may result in the issuance of a new title to the 1<sup>st</sup> Respondent thereby extinguishing the Appellant's proprietary interest in the suit property.

13. I am satisfied that the Appellant has demonstrated substantial loss.

14. In conclusion I find merit in this application and I grant the orders sought namely;

**a) That an order of Stay of execution is hereby issued against the judgment delivered on 13<sup>th</sup> May 2025 in Loitokitok in ELC E003 of 2024 pending the hearing and determination of this Appeal.**

**On condition that the Appellant do deposit Kshs.300,000/= as security for costs in a joint interest earning account of both, counsel for the Appellant and the 1<sup>st</sup> Respondent within forty five (45) days from the date of this ruling.**

**Failure to which the orders shall lapse automatically.**

b) That costs of this application do abide the outcome of the appeal.

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

**L.KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

N/A for the Appellant.

N/A for the Respondent

Court Assistant - Peter.