



Muthoni (Suing as the legal representative of the Estate of the Late Phylis Wanjiru Njoroge- Deceased) v Ngugi & 3 others (Environment and Land Case E342 of 2018) [2025] KEELC 18391 (KLR) (10 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18391 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E342 OF 2018
TW MURIGI, J
DECEMBER 10, 2025**

BETWEEN

SERAH NJERI MUTHONI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE PHYLIS WANJIRU NJOROGE- DECEASED) PLAINTIFF

AND

**CHARLES NJOROGE NGUGI 1ST DEFENDANT
LUCIA WANJIRU NGUGI 2ND DEFENDANT
SAMSON MAHUGO 3RD DEFENDANT
THE LAND REGISTRAR 4TH DEFENDANT**

RULING

1. Before me for determination is the Notice of Motion dated 24th March 2025, brought under Order 42 Rule 6(1) and (2), Order 51 Rule 1 of the Civil Procedure Rules, and Section 3A of the [Civil Procedure Act](#), in which the Applicant seeks the following orders:-
 - a) Spent.
 - b) Spent.
 - c) That this Honourable Court be pleased to grant a stay of execution of the judgment and decree dated 10th February issued in this matter pending the hearing and determination of this Appeal
 - d) That the costs of the application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Charles Njoroge Ngugi, sworn on even date.



The Applicant's Case

3. The deponent averred that, being dissatisfied with the judgment delivered on 10th February 2025, they filed an appeal that raises arguable issues and has a high likelihood of success.
4. He contended that the suit property belongs to a third party. The deponent is apprehensive that the Respondent will execute the judgment to their detriment, noting that the court directed the Deputy Registrar to execute all documents necessary to effect the transfer. He maintained that the application was filed timeously and that they are willing to comply with any condition set by the court.
5. He contended that the appeal would be rendered nugatory if a stay of execution is not granted.

The Respondent's Case

6. The Respondent filed grounds of opposition and a replying affidavit dated 22nd April 2025 in opposition to the application.
7. The deponent contended that the appeal does not raise any arguable issues. She maintained that the trial court meticulously analyzed the evidence on record and confirmed the existence of a customary trust. She asserted that the Applicants claim that the suit land was sold to a third party does not override the court's declaration of a trust. She pointed out that the Applicants failed to prove they would suffer substantial loss if the decree were executed. She further maintained that the Applicants have not offered security for the due performance of the decree.
8. She contended that executing the judgment would not render the Appeal nugatory, as the Applicants can prosecute it even after the land is restored to the trust estate. She also noted that there has been an inordinate delay in filing the application.

The Response

9. The application was canvassed by way of written submissions.

The Applicant's Submissions

10. The Applicants filed their submissions dated 13th June 2025, which I have duly considered. As of the time of writing this ruling, the Respondent had not filed her submissions as directed.

Analysis And Determination

11. Having considered the application, the respective affidavits, and the Applicants submissions, the only issue for determination is whether the Applicants have satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for the grant of a stay of execution pending Appeal.
12. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules outlines the guiding principles to be met for the grant of a stay as follows;

6(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, on 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.

6(2) No order for 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 unreasonable delay, and such security of costs for the performance of such decree or order as may ultimately be binding on him has been given by the Applicant.

13. The grant of an order of stay of execution is a discretionary one. In the case of *Butt Vs Rent Restriction Tribunal* (1982) KLR 417, the Court of Appeal set out guidelines on how a court should exercise its discretion as follows;

“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, the 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.”

14. Similarly, 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.”

15. The Court is therefore called upon to balance both the rights of the successful party so as not to hinder her from the fruits of her judgment and those of the Appellants whose Appeal may succeed and be rendered nugatory if a stay of execution is not granted.

16. The purpose of a stay of execution is to preserve the substratum of the case. In the case of *Consolidated Marine vs Nampijja & Another* Civil App No. 93 of 1989 (Nairobi), the Court held that;

“The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal is safeguarded and the appeal, if successful, is not rendered nugatory.”

17. The Court will now determine whether the Applicants have satisfied the conditions upon which the orders can be granted.

Regarding the first condition, that substantial loss may result unless stay orders are granted, the Applicants should not only state that they are likely to suffer substantial loss; they must prove that they will suffer substantial loss if stay orders are not granted.



18. In so finding, I am persuaded by the decision in Charles Wahome Gethi vs Angela Wairimu Gethi (2008) eKLR, where the Court of Appeal held that;

“...it is not enough for the Applicants to say that they live or reside on the suit land and they will suffer substantial loss. The Applicants must go further and show the substantial loss that the Applicants stand to suffer if the Respondent executes the decree in this suit against them.”

19. What amounts to substantial loss was expressed by the Court of Appeal in the case of Mukuma vs Abuoga (1988) KLR as follows;

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.

20. In Tropical Commodities Suppliers Ltd and Others Vs International Credit Bank Ltd (in Liquidation) (2004) 2EA 331, the court defined substantial loss as follows;

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal...”

21. The Applicants contended that they will suffer substantial loss if a stay of execution is not granted, as the Respondent will proceed to execute the judgment. The Applicants are apprehensive that the Respondent will execute the judgment because the court ordered the Deputy Registrar to execute all documents necessary to effect the transfer. The Respondent maintained that the Applicants can still prosecute the appeal even if the land reverts to the trust.

22. The purpose of a stay of execution is to preserve the substratum of the case. The execution complained of goes to the very core of the dispute and risks rendering the appeal nugatory. Based on the material before me, I find that if the transfer is effected, the legal and proprietary status of the suit property will be altered. This court therefore finds that the Applicants have demonstrated that they will suffer substantial loss if a stay of execution is not granted.

23. In an application for stay of execution pending Appeal, an Applicant must also satisfy the Court that the application has been made without unreasonable delay. It is not in dispute that judgment was delivered on 10th February 2025. The present application was filed in Court on 24th March 2025. I find that the application was filed without unreasonable delay.

24. Regarding the last condition on the provision of security for costs, Order 42, Rule 6(2)(b) of the Civil Procedure Rules is couched in mandatory terms, requiring the Applicant to furnish security for the performance of the order or decree. In the case of Arun C Sharma vs Ashana Rakundalia T/A Raikundalia & Co. Advocates & 2 Others (2014) eKLR, the court held that;

“The purpose of the security under Order 42 is to guarantee 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 applicant becomes a judgment debtor in relation to the respondent. That is why any security given under order 42 rule 6 of the civil procedure rules acts as a security for the 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.”



25. The Applicants have expressed their willingness to abide by the terms as the Court may direct.
26. In the end, I find that the Applicants have satisfied the conditions required for the grant of an order of stay of execution pending appeal.

The upshot of the foregoing is that the application dated 24th March 2025 is allowed in the following terms;

- i. Stay of execution of the decree issued on 10th February 2025 is granted pending the hearing and determination of the Applicant's Appeal.
- ii. The Applicants shall deposit the Kshs. 300,000/= in court within 45 days from the date of delivery of this ruling, and in default, the stay orders shall automatically lapse.
- iii. Costs to abide by the outcome of the appeal.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 10TH DAY OF DECEMBER, 2025.

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HON. T. MURIGI

JUDGE

In The Presence Of:-

Angela for the Respondents

Irungu for the Applicant

Ahmed- Court Assistant

