



**Ngugi v Kienje & another (Environment and Land Appeal
E120 of 2024) [2025] KEELC 8570 (KLR) (8 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8570 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E120 OF 2024
JA MOGENI, J
DECEMBER 8, 2025**

BETWEEN

ALICE NJERI NGUGI APPELLANT

AND

COSMAS RUGIO KIENJE 1ST RESPONDENT

MARGARET WAIRIMU MWENDA 2ND RESPONDENT

*(Being an appeal from the Ruling of the Honorable Chief Magistrate at
Ruiru Magistrate's Court [Hon Joseph Were] dated 4th October 2024)*

RULING

1. I am delivering a Ruling in respect of an application filed by the Appellant/Applicant dated 13/03/2025 and is brought pursuant to Article 159 (2) (c) & (d) of *the Constitution*, Sections 1A, 1B, 3A, 59, 79G & 95 of the *Civil Procedure Act*, Order 42 Rule 6, Order 46 Rules 1, 20 (1) & (2), Order 51 Rules 1 and 3 of the Civil Procedure Rules 2010 seeking the following orders:-
 1. Spent.
 2. That the Court be pleased to stay of proceedings in Ruiru Elc Case No. E018 of 2024 between Cosmas Rugio Kienje & Anor versus Alice Njeri Ngugi slated for 21st March 2025 pending the hearing and determination of this Application
 3. That this Honorable Court be pleased to grant a stay of execution of the Ruling of the Honorable Court delivered by Hon. Joseph Were on 4th October at Ruiru Law Courts in Ruiru Elc Case No. E018 of 2024 between Cosmas Rugio Kienje & Anor versus Alice Njeri Ngugi and all consequential orders thereto pending hearing and determination of this application.



4. That this Honorable Court be pleased to grant a stay of execution of the Ruling of the Honorable Court delivered by Hon. Joseph Were on 4th October at Ruiru Law Courts in Ruiru Elc Case No. E018 of 2024 between Cosmas Rugio Kienje & Anor versus Alice Njeri Ngugi and all consequential orders thereto pending the hearing and determination of the Appeal
 5. That pending the hearing and determination of this Application and Appeal, the Court be pleased to grant an order to refer the matter to Arbitration in the manner and style agreed upon by the Parties in the Sale Agreement dated 21st January 2023 between the parties herein.
 6. That in the alternative to prayer 5 above, the Court be pleased to give an order for expeditious disposal of the appeal including providing timelines for the disposal of the Appeal.
 7. That the Court be pleased to reinstate the matter in the e-filing portal having been erroneously indicated as closed while the Appeal is yet to be heard and determined.
 8. That costs of this Application be provided for.
2. The grounds are that the Counsel for the Appellant misdiarized and that is why they did not attend Court. Further that a Ruling was delivered in this case and then 30 days stay was granted but it has since lapsed.
 3. The Appellant has stated that the Respondent has taken precipitate action in seeking to obtain warrants of attachment against the Appellant and is intent on executing the same.
 4. The Applicant has also indicated that he has filed the Memorandum of Appeal and noting that the stay granted by the lower Court is about to lapse, if stay of execution is not granted the Appeal may be rendered nugatory for reason of the execution of the Ruling by the Respondent. He avers that in the event the Appeal succeeds, the Respondent may not be in a position to redeem the Appellant of the decretal sum.
 5. It is the case for the Appellant that the Respondent will not be adversely affected should the Court grant orders of stay of execution which will only be limited to the effect of securing the decretal sum in a manner that would make execution of the same possible should the Appeal succeed.
 6. The Application is opposed by the 1st Respondent Cosmas Rugio Kienje vide a Replying Affidavit sworn on 16/04/2025 where he averred that the application is an abuse of the Court process and a mere afterthought brought with the sole intention to waste the Court's precious time.
 7. According to the 1st Respondent the Appeal offends Order 42 rule 6 of the Civil Procedure Rules since the Appellant did not wait for the outcome of her parallel application for stay that she had filed at the lower Court. Further that the Appellant neither sought for Review nor setting aside of the Decree before the lower Court citing the errors allegedly contained in the Decree and the Certificate of Costs.
 8. It is the contention of the Respondent that the Appellant upon getting stay orders from this Honorable Court, went into deep sleep and were only awakened by the Respondent's move to execute the Decree at the lower Court after their stay orders were dismissed for want of prosecution.
 9. Further that this application is brought with the sole intention of scuttling the intended execution since according to the Respondent the Appellant has neither filed a plausible Appeal nor established an Appeal with a high probability of success nor does the balance of convenience tilt in her favour .
 10. As a matter of fact, the particulars of Appeal by the Appellant are otherwise an abuse of the Court process as they do not disclose plausible grounds of appeal for the following reasons:



- a. The Appeal intends to introduce new evidence which was not introduced by the Appellant in her Defence in the trial Court.
 - b. The Appeal gradients to urge the Appellants submissions on facts which facts were not rebutted to in her Defence.
 - c. The Appeal is inclined to persuade this Court to rewrite the agreement between the Respondent and the Appellant despite the agreement having explicit terms and conditions for sale and which terms and condition for sale were not disputed in the trial Court.
11. According to the Respondent the Appellant never paid for the requisite fees for certified copies of proceedings an indicator that she is not keen to pursue her Appeal. Further that despite the Respondent's attempt for an out of Court settlement the Applicant dismissed and scoffed at it.
 12. It is the 1st Respondent's contention that the Applicant seeks to introduce new issues in the Appeal that were not litigated at the trial Court. He thus holds the view that the trial Magistrate did not err in law and fact.
 13. Also, that the Applicant has not met the requirement of grant of stay of execution including the provision of security. If the Court is inclined to grant the stay, then it should order the Applicant to deposit the entire decretal sum in a joint interest earning account.
 14. Being a man of means the Respondent avers that he can always redeem the Appellant in case she is successful in her Appeal minus the stay orders.
 15. The 2nd Respondent did not file any response to the application.
 16. In response to the 1st Respondent's Replying Affidavit the Applicant filed a Further Affidavit sworn on 5/04/2025 and reiterated her position in the application. On the issue of security, she clarified that she is willing to deposit half the decretal sum in an account pending the hearing of the Appeal.
 17. She also reiterated her claim that she failed to prosecute her application which led to the dismissal because of misdiarization by her Counsel. She denied that she intends to scuttle the process of the suit and that neither is she delaying the hearing.
 18. Counsel agreed to file written submissions to the application and the Court gave directions on the same.

Issues for determination

19. I have considered the Applicant's Application for stay of execution of the Decree in this matter pending the hearing and determination of her intended Appeal.
20. The law concerning stay of execution pending Appeal is found in Order 42 Rule 6 of the Civil Procedure Rules which stipulates as follows:

“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.

- (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
 - 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.”

21. There are three conditions for granting of stay order pending Appeal under Order 42 Rule (6) (2) of the Civil Procedure Rules to which:
 - i. The Court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered.
 - ii) The application is brought without undue delay and
 - iii) Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on her has been given by the Applicant.
22. I have considered the instant application, the annexures thereto, the written submissions and the cited authorities together with the relevant provisions of law and found that the one issue for determination before this Court is whether the orders for stay of execution pending appeal are merited.

Analysis and determination

Whether the orders for stay of execution pending appeal are merited.

23. I have considered the Applicant’s application in view of the aforementioned conditions. The purpose of 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 are safeguarded and the Appeal if successful is not rendered nugatory.”
24. The Courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the Act or in the interpretation of any of its provisions. According to Section 1A (2):

“The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective.”
25. While under Section 1B some of the aims of the said objective are:

“The just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”



26. It therefore follows that all the pre-overriding objective decisions must now be looked at in the light of the said provisions. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice.
27. On the first condition of proving that substantial loss may result unless stay order is made, the Applicant has submitted that the Respondent is in the process of extracting warrants of attachment. A fact not denied by the 1st Respondent. Further she fears that the Respondent may not be in a position to redeem the Appellant of the decretal sum.
28. The fact of the Respondent being not able to redeem the Appellant of the decretal sum was rebutted by the Applicant who stated that he is a man of means. None of the averments are supported by any evidence on either side.
29. On the second condition, there is no dispute that the impugned Ruling was delivered on 7/10/2024 wherein the Applicant sought for stay of execution vide the current application dated 27/11/2024. I find that the said application is brought without undue delay.
30. On the last condition, the Applicant contended that she is willing to provide such security for the performance of the Decree as the Court may direct but taking into account that the fact that she is willing to deposit half of the decretal sum as security.
31. Further that the trial Court already made its orders by allowing the 1st Respondent 30 days' stay of execution which have however since lapsed.
32. Despite the above contention by the 1st Respondent, I opine that the Court has discretion to order that security be furnished in any case where it thinks fit.
33. In the foregoing the Court finds that the Applicant has demonstrated a reasonable likelihood of loss if stay is not granted. The Respondent on the other hand does not stand to suffer any loss if stay is granted. To this effect the Court orders as follows:
 - a. The Application dated 13/3/2025 is allowed in terms of Prayers (2), (3), (4) and (7).
 - b. The Applicant shall deposit Kshs. 700,000.00 (Kenya Shillings Seven Hundred Thousand Only) in Court as security for the due performance of the Decree within forty-five (45) days from the date of this Ruling.
 - c. Failure to comply with Order (2) hereinabove, Order (1) hereinabove shall automatically lapse.
 - d. That the Appellant/Applicant shall within 45 days from the date of this Ruling compile, file and serve upon the Respondents a complete Record of Appeal.
 - e. Costs shall abide the cause.
34. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 8TH DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.

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**MOGENI J
JUDGE**



In the presence of:

Ms. Omollo holding brief for Mr. Gachau for the Appellant

1st and 2nd Respondents - Absent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

