



REPUBLIC OF KENYA



Amoth & 10 others v Amoth & 3 others (Environment and Land Appeal E025 of 2025) [2025] KEELC 18504 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18504 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND APPEAL E025 OF 2025
AE DENA, J
DECEMBER 18, 2025**

BETWEEN

ERICK WANGO AMOTH & 10 OTHERS APPELLANT

AND

CORNEL RASANGA AMOTH 1ST RESPONDENT

COUNTY GOVERNMENT OF SIAYA 2ND RESPONDENT

LIVINGSTONE RAGEN AMOTH 3RD RESPONDENT

WEST KENYA SUGAR COMPANY LIMITED 4TH RESPONDENT

RULING

1. The applicants lodged this appeal together with a Notice of Motion Application dated 25/05/2025 under Certificate of Urgency seeking interim orders of stay of execution of the court decree dated 6/3/2025 by the Hon. Benjamin Limo pending the ruling in ELCA E005/2025 on 19/6/2025 and order restraining the Respondents their servants Ikimwanya Auctioneers from executing the court decree dated 6/3/2025 pending the ruling by this court on in ELCA E005/2025.
2. The application is supported by the affidavit sworn by Erick Wango Amoth sworn on 28/5/2025.
3. The applicant depones that he filed an application under certificate of urgency dated 16/5/2025 at the trial court seeking stay of execution of the trial court decree dated 6/03/2025 in ELC 21/2019. That the interim orders of stay were denied but the same was certified urgent and he served the respondents on 20/5/2025 including the auctioneers for interpartes hearing of the application on 3/6/2025.
4. The deponent states that on 27/5/2025 the auctioneers (Ikimwana Auctioneers) made a proclamation where the deponent was given 7 days to pay the decretal sum. That the notice was lapsing on the day of the interpartes hearing of the application dated 3/6/2025. That the decline of interim orders had exposed them to the risk of being auctioned. That there was an appeal challenging the same decree



pending ruling in ELCLA/E005/2025 which ruling was slated on 19/06/2025 and the decree holders should wait for the delivery of the ruling in the said appeal. That should the decree be executed they will suffer irreparable loss.

Replying Affidavit

5. The 1st and 3rd respondents responded to the application through the 3rd respondent Livingstone Ragen Amoth sworn on 5/6/2025. He depones that the trial court delivered a ruling on the preliminary objection raised by the respondents in ELC 21/2019 where the respondents were awarded costs contrary to the statement that no costs were awarded. That the issue of whether we were awarded costs or not has been settled, since the applicant sought a review of the same and the court vide a ruling date 17th of February 2025 clarified that indeed we were awarded costs.
6. It is averred a party cannot exercise both his right to review and appeal on the same decision and that the appellants having reviewed the decision on the costs, there lies no appeal no matter the attempts. It is asserted therefore the application and the entire appeal is an abuse of the court process as the lower court had no jurisdiction to entertain and adjudicate on an application for stay of execution when the applicant approached it after the same applicant had earlier filed a stay of execution before this court in ELCA 5/2025. A copy of the application for stay of execution in ELCA 5 of 2025 and stay of execution in the lower court were attached.
7. It is deponed that once the stay of execution application was before the superior court, the lower court's adjudication function was extinguished with regards to a similar application. The applicant's conduct, is clearly a forum shopping or at worst a duplication of work for the judicial officers without due regards to the precious judicial time and resources. Moreover, the rules demand for the lower court to be approached first for the stay of execution before the superior court and not the vice versa.
8. It is deponed those costs were taxed at Kshs 349,235 and the respondents proceeded to engage Ikimwanya Auctioneers who thereafter proclaimed property belonging to Erick Wango Amoth. However, the auctioneers have not executed the warrants of attachment, as the said Erick Wango Amoth chased them using a panga on the of material day they went to proclaim his property and that there is an application by Ikimwanya Auctioneers seeking police protection from the OCS Siaya Police Station, to enable them carry out execution.
9. It is further deponed that the respondents advocates on record have filed an application seeking to stay the proceedings in the main suit ELCLC/E001/2025 awaiting the settlement of the costs in the previous suit that was dismissed and that gave rise to the costs. A copy of the application for stay is attached.
10. That there is mischief and attempts by the applicants to frustrate and delay the recovery of the costs legally due to the defendants by filing numerous incompetent applications while at the same time seeking justice from the same courts which is tantamount to an abuse of the court process.
11. That a stay of execution is a discretionary power and the applicants cannot claim that they were automatically entitled to it. That the proclamation was done on properties belonging to Erick Wango Amoth and in any case, the assertions that the properties attached belonged to none of the applicants is baseless as it is only the owners of such properties who can legally make an objection to such attachment.
12. That if indeed the proclaimed properties belong to another person as claimed by the applicants, they should not be worried at all if the execution is carried out as it is the auctioneers and the respondents who stand to suffer if legal proceedings are instituted against them by the owners of such properties.



13. It is asserted that by filing two applications one that is pending ruling on the 19th day of June, 2025 and the present one, both which are in different files, the applicants are abusing the court processes.
14. The respondents therefore pray that this application and the appeal be dismissed with costs to the respondents and or in alternative to the above, and that for justice to be served, this honorable do direct that the applicants deposit the decretal sums taxed at Kshs 349,235 in a joint interest earning account with the respondents advocate on record and the applicants as signatories pending the hearing and the determination of the appeals.

Grounds of opposition

15. Additionally, the 1st and 3rd respondents filed grounds of opposition dated 16/06/2025 stating that the application before the lower court that gave rise to the appeal were filed in violation of the doctrines of lis pendens as it was pending before this court. The appeal and application run a foul the doctrine of stare decisis. That no leave to appeal was sought where the decision to stay execution is a discretionary power of the court.

Further Affidavit

16. The applicants filed a further affidavit in rejoinder sworn by Eric Wango Amoth on 27/6/2025. It is averred that the applicant was present in open court and the costs were awarded except that the proceedings were not recorded electronically as confirmed by the ICT department. That he never sought any review at the lower court as no formal application was made. That the purported clarification that costs were awarded amounts to a double ruling. That the applicants never participated in the taxation and do not know its basis and whether it was on the amended. It is reiterated that the application for stay has been made because the costs were never awarded. At the time of filing the appeal in ELCCA 5 of 2025 the taxation had not been finalised and it became necessary to appeal once the taxation crystallised. That deponent states he signed the proclamation and it was not possible that he signed the same and chased away the auctioneers.
17. It is stated that justice can be served by merging the two files as what is at the centre is the illegal taxation.

Submissions

18. The application was canvassed through written submissions. The applicants' submissions are dated 27/6/2025 and the respondents are dated 18/6/2025.

Analysis And Determination

19. I have read the affidavits sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions filed.
20. First and foremost a number of preliminary issues have been raised by the respondents which I must resolve. It has been urged that there are two appeals appeal No. ELCA 5 of 2025 and ELCA 25 of 2025 which is an abuse of the court process.
21. The respondents position is that if the appellants felt threatened by the execution, they should have returned to this Superior Court in their initial appeal filed on 20/2/2025 being ELCA 5 of 2025, for reasons that circumstances had now changed and there was real danger of their property being auctioned. On the other hand, the applicants contend that at time of filing the appeal in ELCCA 5 of 2025 the taxation had not been finalised and it became necessary to appeal once the taxation crystallised.



22. On the issue of two appeals, I find nothing wrong with the applicant having moved the court by way of these proceedings after the taxation crystallised. The present appeal as the record of appeal states ‘is an appeal from the orders of the Principal Magistrates Court at Siaya (Hon Benjamin Limo) in the Notice of Motion dated 16th May 2025 in ELC No. 21 of 2019 closed). This therefore is a different matter for which the appellant has a right to exercise his right of appeal if aggrieved by the orders of the trial court. There are two appeals and which are rightly before court as of right in my view.
23. I have also looked at the issues raised by Counsel for the respondents as to the competency of the present appeal and I’m of the considered view that the same are grounds that go to the substance and the merits of the appeal and should be argued under the substantive appeal.
24. I will now go to the matter before me which is the application for stay of execution of the decree on costs and whether such stay should be granted.
25. The principles guiding the grant of a stay of execution pending appeal are laid out under Order 42 rule 6(2) of the Civil Procedure Rules which provide; -
- “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.
26. It is evident from the above provisions that power to grant stay of execution pending appeal is an exercise of discretion of the court on sufficient cause being shown by the Applicant that substantial loss may result to the applicant if the orders are denied; the application should be made without undue delay and the court will impose such security as the court may impose for the due performance of any decree or order as may ultimately be binding on the Applicant. See *Amal Hauliers Limited Vs Abdunasi Abukar Hassan* (2017) eKLR & *Butt Vs Rent Tribunal* (1982) KLR 417.
27. The events leading to the present application and appeal have been enumerated in the respondents’ submissions. Attempts by the applicants to stop the taxation before the trial court did not succeed and auctioneers were appointed and who proclaimed. The proclamation was attached and it is not in dispute. Based on the proclamation I granted interim orders of stay of execution and proceedings in the lower court which I extended the order pending the application before me.
28. As it is the applicant already succeeded in having the suit ELC No.21 of 2019 filed in the Magistrates court dismissed and have a decree for their costs and are of the contention that the application is meant to delay the satisfaction of the decree. However, for justice to be served, it is proposed by the respondents that the applicants deposit the decretal sums taxed at Kshs 349,235 in a joint interest earning account as already mentioned elsewhere in this ruling pending the hearing and the determination of the appeals.
29. I have pondered over the above proposal which in my view strikes a balance for both parties as the applicants will be freed from the exposure of being auctioned pending the appeal and the decree holder will have security for the performance of the decree. In any event the decree is monetary.



30. I however note the applicants are in person while the decree holders are represented which may pose challenges with the opening of a joint account. The court therefore is of the view that the better option would be for the sum to be deposited in court.
31. The upshot of the foregoing is that the Notice of Motion Application dated 25/05/2025 is disposed of in the following terms; -
1. An order of stay of execution of the court decree dated 6/3/2025 hereby issues and restraining the Respondents their servants Ikimwanya Auctioneers from executing the court decree dated 6/3/2025 pending the determination of the appeal.
 2. The Applicants shall deposit in Court the amount of Kshs.349,235 within 45 days of this ruling.
 3. Failure to comply with order No. 2 above the decree holder shall be at liberty to execute.
 4. The costs of the application shall abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 18TH DAY OF DECEMBER 2025

HON. A. E. DENA

JUDGE

18/12/2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

N/A for the applicant

N/A for the respondent

Court assistant: Ishmael Orwa

