



Kenya Airways Limited v Charo; Shutu (Applicant) (Environment and Land Case 10 of 2008) [2025] KEELC 18472 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18472 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 10 OF 2008
FM NJOROGE, J
DECEMBER 18, 2025**

BETWEEN

KENYA AIRWAYS LIMITED PETITIONER

AND

JAPHET NOTI CHARO DEFENDANT

AND

RUKIYA CHARO SHUTU APPLICANT

RULING

1. The Notice of Motion dated 8th October 2025 seeks the following principal orders:
 - a. That is court be pleased to issue a stay of execution of the ruling of the court delivered herein on 30th September 2025 relating to the proposed interested/ affected party's/applicant's application dated 6th May 2025 and in particular by staying the execution of the judgment made herein on 14th May 2025 and/or any consequential orders made therefrom pending the hearing and determination of this application and subsequently the hearing and determination of the appeal.
 - b. That the costs of the application be provided for;
2. The application is supported by The sworn affidavit of Rukiya Charo Shutu, the applicant.
3. The grounds on which the application is premised are that the applicant's application for review dated 6th May 2025, which sought review of the judgment dated 14th March 2019, was dismissed on 30th September 2025; that the applicant has filed an appeal against the said ruling through a Notice of Appeal dated and lodged on 8th October 2025 as there are intentions to execute the judgment herein, which if effected would lead to her eviction, thus the urgent need to stay execution of that judgment. It is stated that there will be no prejudice occasioned to the respondent.



4. The plaintiff/respondent replied to the application through the sworn affidavit of Evans Gatobu, its Facilities Manager, who gave a detailed history of the matter as follows: the plaintiff is the registered owner of the suit land; in 2008 the defendant encroached on the suit property and commenced construction of some structure thereon and the present suit was instituted and orders obtained restraining the defendant from conducting any further construction on the property. The judgment eventually delivered against the defendant in the suit determined the issues of ownership and occupation of the suit property and the plaintiff was pronounced the registered owner of the suit property while the counterclaim filed by the defendant was dismissed. An application for stay of execution was dismissed on 8th June 2022. The plaintiff filed an application for execution of decree dated 3rd September 2024; the Deputy Registrar ELC issued a notice to show cause; the notice to show cause came up for hearing on 28th October 2024; the defendant filed an application dated 6th November 2024 seeking status quo pending hearing and determination of the appeal; the application came up for hearing on 11th December 2024 before the Court Of Appeal, where consent order was recorded between the parties; the defendant failed to abide by the conditional order of status quo and the default provision of execution in the consent kicked in against him; that there have been previous applications by the administrators of the estate of the late Charo Shutu, the applicant's father, seeking inter alia to be joined as interested parties to the present case, and that the suit be heard de novo; that on 19th March 2025 this court dismissed the application dated 11th November 2024 and found that the applicants therein were not in occupation of the suit property and they had no identifiable stake or interest in respect thereof; that the administrators, aggrieved by that ruling sought a stay of execution of the judgment pending appeal which this court denied; that the present applicant made an almost similar application dated 6th May 2025 seeking to be joined as an interested party to the main suit as well as stay of the judgment dated 14th March 2019, and the court rejected that application on 30th September 2025; that now this application has been brought seeking stay of execution of the judgment pending appeal against the ruling of 30th September 2025.
5. It is claimed by the deponent that the Notice Of Appeal dated 8th October 2025 has not been served upon it or its advocates; that on 24th of October 2025, the Court of Appeal at Malindi delivered its judgment on an appeal against the judgment herein, thereby upholding the judgment and decree of the ELC at Malindi dated 14th March 2019, thus confirming that the plaintiff is the valid owner of the suit property and awarding costs of the appeal to the plaintiff; that consequently the Court Of Appeal and this court have both found that the defendant and the applicant herein are neither proprietors nor in possession of the plaintiff's suit property; that litigation must come to an end; that the present application is yet another attempt by the applicant as an agent of the defendant hearing to reopen the suit and repackage issues that have been fully canvassed and conclusively determined by both this court and the Court of Appeal; that the present application is a reproduction of at least 3 previous applications dated 11th November 2024, 24th March 2025, and 6th May 2025, which were all dismissed after full consideration by this court and on grounds directly related to the issues now being raised once again herein; that this court has also dismissed another attempt, filed by the administrators of the applicants father's estate in Malindi ELC Petition E10 Of 2025 Masha Shutu Fondo ad Katana Shutu Masha versus Job Mwangi and Rogers Kaibunga & 7 others, to stop the execution of the judgment of this court and the Court of Appeal. The deponent states that the issue of possession, occupation and alleged prescriptive rights has already been adjudicated upon and dismissed by this court in its ruling of 30th September 2025 as well as by the Court Of Appeal in its judgment of 24th October 2025; that the applicant's assertion that she has been in continuous possession of the suit properties since 1959 is false and contradicted by the courts' own findings that neither the applicant herein nor the deceased defendant had established occupation or the suit property.



6. The plaintiff filed submissions dated 2nd December 2025. No submissions had been filed by the applicant by the time of preparation of this ruling despite the time granted for filing them having expired.

Analysis and Determination

7. I have considered the application, the replying affidavit and the submissions of the respondent. The issue that arises for determination is whether the grant of the prayers in the application dated 8th October 2025 seeking stay of execution of the ruling of the court delivered on 30th September 2025 is deserved.
8. Cutting clean through the extensive foliage of facts, accusations and counter accusations in the application and the response this finds 4 very important facts that seriously militate against the grant of the said orders.
9. First, the ruling dated 30th September 2025 merely dismissed the application dated 6th May 2025 and there is therefore nothing in that ruling to be stayed within the appropriate interpretation of the expression “stay of execution” and this court needs not elaborate more on that fact.
10. Secondly, perchance it were possible to issue a stay order on that application, this court has earlier on determined that the members of the family of Charo Shutu Masha were not resident on the suit premises; these members must have included the present applicant Rukiya. It was no surprise then that the application that she made dated 6th May 2025 was dismissed after due consideration by this court. They are allegations which will remain untrue even if they are repeated numerous times, and in this case the claim that the applicant is resident on the suit premises is one such.
11. Thirdly, the court would have expected that in a stay of execution application the affidavit would go a step further and demonstrate such occupation but this court’s perusal of the affidavit dated 8th October 2025 evinces no such occupation. And perchance the court is wrong on the issue of occupation, a further backward glance at the contents of the supporting affidavit annexed to the present applicant’s earlier application dated 6th May 2025 reveals that there was also no proof of occupation among its contents or annexures. It was thus not by conjecture that this court arrived at the decision it indeed on 30th September 2025 when it dismissed the applicant’s application dated 6th of May 2025. That application was dismissed on solid grounds.
12. Fourthly, and which is undisputed by the applicant is that the Court of Appeal has already determined the appeal filed by the defendant in the main case herein (see paragraph 20 of the replying affidavit of Evans Gatobu to which no response has been filed). Upon the delivery of an appellate judgment regarding the judgment in this case, there remains no suit herein that can be reopened or maintained or re-heard unless the appellate judgment is vacated. It would be there for absurd to even contemplate that the application before this court can be granted as there is no future for agitation of the applicant’s claim in the present suit which has reached its final end.
13. In view of the foregoing the application dated 8th October 2025 lacks merit and it is hereby dismissed with costs to the plaintiff. For avoidance of doubt, the temporary orders of stay of execution issued pending the hearing and determination of the application dated 8th October 2025 are hereby vacated in their entirety.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 18TH DAY OF DECEMBER 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

