

**REPUBLIC OF KENYA**

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

**ELCL APPEAL NO.E066 OF 2025**

JANE MUSUNGU ..... APPELLANT

VERSUS

MARY ATIENO OLOO ..... 1<sup>ST</sup> RESPONDENT

LAND REGISTRAR – KISUMU ..... 2<sup>ND</sup> RESPONDENT

THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT

***(Being an Appeal from the judgement of Hon. F.M. Rashid  
delivered on 2<sup>nd</sup> June, 2025 in the original KISUMU CM ELC  
NO. E079 OF 2022)***

**R U L I N G**

The Notice of Motion application before court for determination is dated 19<sup>th</sup> November, 2025. It seeks for an order that pending the hearing and determination of the appeal herein, the honourable court be pleased to grant an order of stay of execution of the judgement and decree in KISUMU MC ELC NO. E079 OF 2022.

The application was supported by the averments in the Supporting Affidavit of the Applicant sworn on 19<sup>th</sup> November, 2025.

The Applicant averred that the effect of the judgement whose execution is sought to be stayed is to demolish her house unless an order of stay of execution is granted. That the lower court ordered

that a road passes through her house.

The application was opposed vide the grounds contained in the Replying Affidavit sworn by the 1<sup>st</sup> Respondent on 26<sup>th</sup> November, 2025. The 1<sup>st</sup> Respondent's case is that the Applicant knows that a government Surveyor together with Land officials visited the parcels of land surrounding the Applicant's title and a report was made. That the import of the application is that the Applicant is against the opening of the road of access thereby denying the 1<sup>st</sup> Respondent exclusive use of her land.

That the Applicant should be compelled to deposit with the Applicant the sum of Kshs.300,000/- awarded by the court below and deposit in court as security the sum of Kshs.4,000,000/- within 45 days.

That the application is made in bad faith and that the Applicant does not stand to suffer any loss at all if the application is declined.

The application was argued orally on 27<sup>th</sup> November, 2025.

I have taken into account the contents of the application, the Replying Affidavit and the oral submissions.

The grounds for grant of an order of stay of execution as provided for in order 42 Rule 6(2) are that;

“No order for stay of execution may 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.”

I have read a copy of the judgement appealed against and whose execution is sought to be stayed. The same is annexed to the Replying Affidavit. The orders made therein were for the Appellant to remove and demolish the structures erected along the access road serving land parcel No. KISUMU/KONYA/6258 and an order for opening of the road. I have also read the Memorandum of Appeal that contains the grounds upon which the Applicant challenges the judgement.

If the demolition takes place and the appeal ultimately succeeds, the Applicant will suffer substantial loss and the appeal rendered nugatory.

The Applicant has undertaken to abide by conditions as the court will direct.

I find that the application has merit. The application is hereby allowed in the following terms: -

- (a) An order of stay of execution of the judgement and

decree in KISUMU MC ELC NO. E079 OF 2022 is hereby granted pending hearing and determination of the appeal on condition that the Appellant/Applicant deposits a sum of (Kenya shillings three hundred thousand only) Kshs.300,000/ being in security, in an interest earning account in the joint names of Counsel for Applicant and Counsel for the 1<sup>st</sup> Respondent within 45 days hereof, failing which the stay of execution order granted herein shall lapse.

(b) Costs of the application be in the appeal.

Orders accordingly.

**Ruling dated and signed at Kisumu and delivered virtually this 18<sup>th</sup> day of December, 2025.**

**E. ASATI,  
JUDGE.**

In the presence of:

Maureen: Court Assistant.

Rono for Appellant/Applicant.

N/A for the Respondents.

..... for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents