

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELC LAND APPEAL NO E054 OF 2025**

**JUDITH TOO.....APPELLANT**

**VERSUS**

**ANTHONY MBOGO.....RESPONDENT**

**RULING**

1. This ruling is in respect of the Appellant/Applicant’s Notice of Motion dated 26<sup>th</sup> January, 2025 seeking the following orders:

*a) Spent*

*b) THAT this Honorable Court be pleased to stay execution of the ruling of the Business Premises Rent Tribunal delivered on 1<sup>st</sup> August 2025, together with all other consequential orders pending the hearing and determination of the instant application.*

*c) THAT this Honorable Court be pleased to stay execution of the ruling of the Business Premises Rent Tribunal delivered on 1<sup>st</sup> August 2025, together with all other consequential orders pending the hearing and determination of the Appellant’s intended appeal against the said ruling.*

*d) THAT the cost of this application be provided for.*

2. The Application is supported by the annexed affidavit of Judith Too, who deponed that she was dissatisfied with the ruling of the BPRT and

has since filed a Memorandum of Appeal and that the Respondent has commenced her eviction process from the suit premises. Furthermore, she is apprehensive that unless the ruling is stayed, the intended appeal will be rendered nugatory.

3. She also deponed that she is ready and willing to abide by any conditions the court may impose for the due performance of the decree and urged the court to grant the order as prayed.
4. The Respondent Anthony Mbogo filed a Replying Affidavit sworn on 2<sup>nd</sup> September 2025 and deponed that should the Honourable court be inclined to allow the application by the Appellant, the Appellant should be compelled to deposit as security, the full decretal amount of Kshs. 130,000/= plus further accrued rent of Kshs. 210,000/- from December 2024 to September 2025, making a total of Kshs.340,000/-
5. It was the Respondent's averment that the Appellant gave contradictory information on the issue whether she had a tenancy agreement with the Respondent or not as noted in the affidavit that she entered in an oral tenancy agreement. He urged the court to dismiss the application with costs.

#### **APPELLANT'S SUBMISSIONS**

6. Counsel for the Appellant filed submissions dated 21<sup>st</sup> October 2025, and listed two issues for determination, whether stay of execution of the ruling dated 1<sup>st</sup> August 2025, should be granted and who should bear the costs of the Application.

7. On the first issue, counsel relied on Order 42 Rule 6 of the Civil Procedure Rules, and submitted that the Applicant has met the conditions set for the grant of stay of execution and that she will suffer substantial loss if the Respondent is allowed vacant possession, he may deal with the property in a manner that is prejudicial to her.
8. Counsel further submitted that the Appellant is ready and willing to abide by any conditions set by the court for the due performance of the decree and that the Application was brought without undue delay.

#### **RESPONDENT'S SUBMISSIONS**

9. Counsel for the Respondent filed submissions dated 10<sup>th</sup> November 2025 and relied on Order 42 Rule 6 of the Civil Procedure Rules, the cases of **Butt Vs Rent Restriction Tribunal (1982) KLR 417, Gianfranco Manenthi & another vs Africa Merchant Assurance Company Ltd [2019] eKLR, China City Construction Company Limited & another vs Karisa (Suing as the Administrator and Legal Representative of the Estate of the Late Didlora Mwaka Mwangala) [2024] KEHC 3323**, and urged the court to dismiss the Application with costs as the Appellant has not met the threshold for grant of stay of execution.

#### **ANALYSIS AND DETERMINATION**

10. The issue for determination is whether the Applicant has met the threshold for the grant of an order of stay of execution. The principles governing application for stay of execution are well settled under Order 42 Rule 6 of the Civil Procedure Rules, which an Applicant must comply with before such an order is granted.

11. In this case, the court notes that the impugned ruling was delivered on 1<sup>st</sup> August 2025 and the Application was filed on 26<sup>th</sup> August 2025, which shows that it was filed timeously. Filing an application timeously without fulfilling the other conditions as to whether an Applicant will suffer substantial loss or offering security for the due performance of the decree, does not give the Applicant a free ticket to obtaining the order of stay of execution.
  
12. In the case of **Chris Munga N Bichange & 2 others v Independent Electoral and Boundaries Commission & 2 others [2021] KEHC 6102 (KLR)**, the Court of Appeal explained the principles to be applied in considering an application for stay of execution as follows:

*“..... The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”*

13. Similarly, in the case of **Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others Civil Appeal No. 291 of 1997**, the court held as follows:

*“ . . . the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . .the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.”*

14. The Applicant has not persuaded the court that she will suffer substantial loss if an order of stay of execution is not granted. She has further not demonstrated the loss that she will suffer if the order is not granted. Mere assertions of substantial loss is not enough as there has to be documentary evidence to support such a claim as was held in the case of **Samvir Trustees Ltd. –vs- Guardian Bank Ltd. (Nairobi (Milimani) HCCC No. 795 of 1997**.

15. I have considered the application, the Affidavits in support and the submissions by counsel and find that the application lacks merit and is therefore dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 14<sup>TH</sup> DAY OF JANUARY 2026.**

**M. A. ODENY**  
**JUDGE**