

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 411 OF 2010

SUSAN WANJIKU KARANJA

(Suing through her Agent

M/s

EUNICE

MUTHONI

WARUI).....PLAINTIFF/RESPONDENT

VERSUS

LAWRENCE

MUGAMBI.....DEFENDANT/APPLICANT

RULING

1. Before this court for determination is the notice of motion dated 10th March, 2025 filed by the defendant/applicant, and it is expressed to be brought under **Order 22 Rule 22 (1), Order 42 Rule 1 of the Civil Procedure, and Section 3A of The Civil Procedure Act** seeking the following orders: -

1. *Spent.*

2. *That this honourable court be pleased to grant the applicant an order for stay of execution of a decree emanating from judgement that was delivered in favour of the plaintiff/respondent on the 25th May, 2016 pending the hearing and determination of the appeal which is in the process of being filed by the defendant/applicant.*

3. *That further or in the alternative this honourable court be pleased to order that all the dealings in the matter hereof be stayed pending*

the outcome of the appeal which is in the process of being filed by the defendant/applicant.

- 4. That the costs of this application be provided for.***
2. The application is premised on the grounds that the defendant/applicant had not been given an opportunity to participate in the trial. Further, that he filed an application dated 12th January, 2024 seeking to set aside the said judgment, and in a ruling delivered on 8th April, 2024 the said application was dismissed.
 3. That being dissatisfied with the said ruling, he filed the notice of appeal dated 15th April, 2024, and since the plaintiff/respondent is keen to execute the decree, he feels that the ends of justice will not be met if the execution is allowed. For record purposes, the notice of motion was accompanied or supported by an affidavit.
 4. The application was opposed vide the replying affidavit of Eunice Muthoni Warui, the plaintiff/respondent's duly appointed agent which was sworn on 24th March, 2025. The plaintiff/respondent deposed that judgment was delivered in her favour on 25th May, 2016 and that no appeal has been preferred to date. Further, that after 8 years since the judgment was delivered, the

defendant/applicant made an application for review which application was dismissed on 8th April, 2024.

5. The plaintiff/respondent deposed that no application for stay of execution was filed aside from a notice of appeal, and that she filed a notice to show cause why the defendant/applicant should not be committed to civil jail. Further, that the same was allowed on condition that the defendant/applicant pays Kshs.400,000 within 45 days from 8th November, 2024 and the balance of Kshs.1,871,305 in 6 monthly instalments.
6. It was deposed that the defendant/applicant failed to pay the same, and that the instant application has been brought 10 months after the ruling was delivered with no reasonable excuse. The plaintiff/respondent deposed that the defendant/applicant has not come to court with clean hands as he had failed to comply with the court orders of 8th November, 2024.
7. In conclusion, she deposed that the defendant/applicant has not met the conditions for stay of execution and urged the court to dismiss the application with costs.
8. The application was canvassed through written submissions. The defendant/applicant filed his written submissions dated 25th July,

2025. The plaintiff/respondent filed her written submissions dated 18th August, 2025.

9. I have considered the application, the reply thereof and the written submissions filed by the parties. The sole issue for determination is *whether the defendant/applicant is entitled to the stay of execution pending appeal.*

10. **Order 42 Rule 6 (1)(2) of the Civil Procedure Rules** provides as follows:-

“(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.”

11. In the case of **RWW V EKW [2019] eKLR** the court held as follows:-

“...the purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of

the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

12. For this court to grant an order of stay of execution, the defendant/applicant must demonstrate that he filed the application under consideration without unreasonable delay, that he will suffer substantial loss if the orders sought are not granted, and that he is willing to deposit security for costs. It is also noteworthy that the court should endeavor to balance the interests of both the successful party in litigation so as not to unnecessarily bar them from enjoying the fruits of judgment and that of the defendant/applicant whose appeal may succeed and be rendered nugatory if stay of execution is not granted.
13. On the issue of delay, a perusal of the court record shows that judgement in the matter was delivered on 25th May, 2016. It is not in dispute that the instant application dated 10th March, 2025 translates to a delay of about 9 years since delivery of the judgment. Notably, there is no evidence of notice of appeal against the said judgment filed by the defendant/applicant.

14. This court is of the view that that the period of 9 years amounts to serious inordinate delay. In addition, there being no notice of appeal on record, it leaves the court with nothing to determine.
15. The upshot of the foregoing is that the notice of motion dated 10th March, 2025 totally lacks merit, and the same is dismissed with costs to the plaintiff/respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 22ND DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
22/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

Mr. Kimaru for the Plaintiff/Respondent

Mr. Kamata and Mr. Kurauka for the Defendant /Applicant