

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE No. E020 OF 2021

GEOFFREY KEMBOI LELEI
PLAINTIFF/RESPONDENT

VERSUS

EZEKIEL
CHERUIYOTKOIMETT.....1STDEFENDANT/APPLICANT
COUNTY LAND REGISTRAR
UASIN GISHU COUNTY
.....2NDDEFENDANT/RESPONDENT

R U L I N G

1. The 1st Defendant (hereinafter referred to as **“the Applicant”**) did file a Notice of Motion Application dated 9.07.2025 (hereinafter referred to as **“the present Application”**) against the Plaintiff and the 2nd Defendant (hereinafter referred to as **“the 1st and 2nd Respondents respectively”**) seeking for following Orders; -
 - (a) Spent**
 - (b) Spent**
 - (c) This Honourable Court be pleased to grant stay of execution of the judgment delivered on 19th June, 2025 and all consequential orders pending hearing and determination of the Appeal.**
 - (d) Costs of this application be in the cause.**
 - (e) Such other orders be made as ate just and expedient.**

2. The prayers sought hereinabove are supported by the facts deponed in the body of the present Application as well as the Supporting Affidavit of even date sworn by the Applicant which can be summarised as follows: -
- (i) The Applicant did state that Judgment was delivered on 19.06.2025 in favour of the 1st Respondent declaring him the first allottee of the parcel of land known as Eldoret Municipality Block 15/2323 (hereinafter referred to as **“the suit property”**).
 - (ii) In addition, the Judgement did direct the 2nd Respondent to record and register the 1st Respondent as the legitimate and legal owner of the suit property in place of the 1st Respondent.
 - (iii) Lastly, the Court did issue a Permanent Injunction against the Applicant and the 2nd Respondents prohibiting any interference of the suit property and/or its ownership thereof.
 - (iv) The 1st Respondent being aggrieved intends to appeal against the whole Judgement of the Court.
 - (v) According to the 1st Respondent, the Certificate of Title issued to him on the 17.10.2024 was lawful and legitimate having complied with all the procedures and requirement in law.
 - (vi) Nevertheless, the 1st Respondent is in the process of executing the impugned Judgment against the Applicant by ensuring a cancellation of the ownership documents and taking possession before the Appeal is hear and determined.
 - (vii) The Applicant also did plead that if this Court does not issue the Stay of Execution Orders being sought herein, then the pending Appeal will be rendered nugatory.

- (viii) Similarly, the Applicant would stand to suffer irreparable and substantial loss as the lawful registered owner, while the 1st Respondent will suffer no prejudice if the orders sought herein are granted.
 - (ix) The Applicant did plead that he was willing to abide by any terms that the Court may set for the granting of the orders sought herein.
 - (x) The Applicant averred that he had made the present application in good faith, timeously and without unreasonable delay and did ask that the Court to issue a Stay of Execution of the Judgment dated 19.06.2025.
3. The present Application was duly served on the 1st and 2nd Respondents.
4. The 1st Respondent upon receipt of the present Application did oppose the same by filing a Replying Affidavit dated 25.07.2025 on the following grounds; -
- (i) First and foremost, the 1st Respondent did outline two critical ingredients for issuance of an Order for Stay of Execution as demonstration of substantial loss and furnishing of security for the due performance of the Decree.
 - (ii) According to the 1st Respondent, the Court in its Judgment pronounced on 19.06.2025 did make a finding that he was the legitimate and lawful owner of the suit property and did direct the 2nd Respondent to register him as such.
 - (iii) The 1st Respondent did further plead that the person in occupation since 1998 was his father who put him in occupation of the suit property to date.
 - (iv) However, it was later discovered by the 1st Respondent that the Applicant had purportedly unlawfully procured

another Certificate of Lease over the suit property and registered the same with the 2nd Respondent.

- (v) The 1st Respondent was of the view that the Applicant's actions of unlawfully procuring a Certificate of Lease over the suit property yet it was not his property had prevented him from putting the same into meaningful use.
- (vi) The 1st Respondent further did state that the present Application was geared towards depriving him of the fruits of his Judgement dated 19.06.2025 after a lengthy litigation exercise.
- (vii) According to the 1st Respondent, the Applicant herein had never been in occupation and/or possession of the suit property and therefore did not stand to suffer any prejudice even if the Orders sought in the present Application were not issued.
- (viii) In essence, the 1st Respondent did plead that there was no dispossession and/or eviction that was enforceable against the Applicant as alleged in the present Application by the Applicant.
- (ix) The 1st Respondent did refer this Court to the Applicant's pleadings and in particular the prayers sought in the Counter-Claim which included an Order of Eviction against him on the suit property.
- (x) As regards the registration of the suit property, the 1st Respondent was of the view that the Court had Ordered for an immediate cancellation of the Applicant's Registration on the date of Judgement dated 19.06.2025.
- (xi) Consequently, there was a high probability that the ownership documents and Register of the suit property being held by the 2nd Respondent had already been rectified.

- (xii) In any event, the 1st Respondent did plead that there was nothing in law prohibiting the reinstatement of the Applicant's registration and re-issuance of the ownership documents in his name in the event his Appeal would succeed.
- (xiii) The 1st Respondent did state that the Applicant herein had not enclosed a copy of the Draft Memorandum of Appeal to demonstrate or give an opportunity to this Court to establish whether there was an arguable or not before issuance of the Orders sought in the present Application.
- (xiv) The 1st Respondent did aver that in the event this Court would be inclined to issue any Order of Stay of Execution pending Appeal, then the appropriate security for costs would be Kenya Shillings Twenty Million Five Hundred Thousand (KShs 22,500,000/-) being the rent collectable for a period of Five (5) years which is the period the Appeal might likely take to be heard and determined.
- (xv) In conclusion, the 1st Respondent sought this Court to dismiss the present Application with costs.
5. The 2nd Respondent on the other hand did inform the Court that it would not participate in the present Application and therefore did not file any documents on the same.
6. The Court did direct that the present application be canvassed by way of written submissions.
7. The Applicant in compliance thereof did file his written submissions dated 21.08.2025 while the 1st Respondent did file his submissions on 10.11.2025.
8. The Court has perused the present application, the Response by the 1st Respondent and the submissions filed therein and identifies the following issues for determinations; -

ISSUE NO. 1 - WHETHER THE APPLICANT HAS MET THE CONDITIONS FOR GRANT OF AN ORDER OF

**STAY OF EXECUTION PENDING THE HEARING
AND DETERMINATION OF THE APPEAL?**

**ISSUE NO. 2 - WHO SHALL BEAR THE COSTS OF THIS
APPLICATION?**

9. The Court having identified the above issues for determination, the same will now be discussed as herein below.

**ISSUE No. 1 - WHETHER THE APPLICANT HAS MET THE
CONDITIONS FOR GRANT OF AN ORDER OF
STAY OF EXECUTION PENDING THE HEARING
AND DETERMINATION OF THE APPEAL?**

10. The first issue for determination is to whether or not the Applicant herein is entitled to the Order of Stay of Execution sought in the present Application.
11. The provisions of Order 46 Rule 6(1) and (2) of the Civil Procedure Rules, 2010 states as follows; -

6. Stay in case of appeal [Order 42, rule 6]

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may

apply to the appellate court to have such order set aside.

(2) 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.

12. The Jurisdiction of this Court under Order 42 Rule 6 of the Civil Procedure Rules, 2010 is discretionary but it must be exercised judiciously and in accordance with established principles.
13. 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 his undoubted right of appeal are safeguarded and the Appeal if successful, is not rendered nugatory.
14. However, in exercising its discretion, the Court must balance the interests of the Appellant aforesaid with those of the Respondent who is a successful litigant so as not to be deprived of the fruits of a lawful Judgment.
15. It is the Court's duty to ensure that none of the party suffers prejudice that cannot be compensated by an award of costs.
16. Nevertheless, when a court is considering an application for stay of execution, it must be satisfied that the Applicant has satisfied the requirements laid down at Order 42 Rule 6 above, which are that;-

- a. ***Substantial loss may result to the Applicant unless the order was made;***
- b. ***The Application was made without unreasonable delay; and,***
- c. ***Such security as the Court orders for the due performance of such Decree or Order as may ultimately be binding on him as has been given by the Applicant.***

Substantial loss

17. In evaluation of this aspect, the Applicant did state that he has been or was the lawful registered owner of the suit property herein.
18. Consequently, the Applicant did plead and submit that Section 26 of the Land Registration Act, No. 3 of 2012 did protect the sanctity of his registration.
19. The Applicant further did plead and submit that it was only proper and fair that the ownership records of the suit property be preserved in the manner they were which was with his name pending the hearing and determination of the Appeal pending.
20. The Applicant did state that the alteration of the ownership records by the 2nd Respondent in compliance with the Judgement pronounced on the 19.06.2025 would result to substantial loss if not irreparable as it would alienate his lawful property to the 1st Respondent before the dispute is resolved on Appeal.
21. Similarly, the execution of the Judgement pronounced on the 19.06.2025 would result to the Applicant being disposed from the suit property before the Appeal would be heard and determined.

22. The 1st Respondent on the other hand did plead and submit that the Applicant herein had not demonstrated any substantial loss if any to warrant the granting of an Order For Stay of Execution.
23. To begin with, the 1st Respondent stated that the Applicant herein had never been in occupation and/or possession of the suit property.
24. The 1st Respondent was of the view that the Judgement pronounced on the 19.06.2025 if implemented and/or executed would not interfere with possession and/or occupation by the Applicant as alleged.
25. The 1st Respondent did further point out to the Court that the Applicant did not present any documentary evidence or otherwise to demonstrate any substantial loss if any that would likely arise in the event the Judgement pronounced on the 19.06.2025 was not stayed.
26. As regards the ownership records and the Orders directed to the 2nd Respondent, the 1st Respondent was of the view and submission that the Judgement pronounced on the 19.06.2025 had directed an immediate cancellation of the Applicant's ownership documents.
27. Consequently, the Applicant had a duty to first and foremost disclose to this Court whether or not the orders issued in the Judgement dated 19.06.2025 had been implemented by the 2nd Respondent or not at the time of filing the present Application on 09.07.2025.
28. The 1st Respondent was of the view that although the Applicant had ownership documents over the suit property, the said rights had been legally terminated through the Judgement pronounced on the 19.06.2025.

29. In essence, the registration of the Applicant on the ownership documents held by the 2nd Respondent were devoid of any legal or legitimate rights hence of no value until when the Judgement pronounced on the 19.06.2025 is revised by the Appellate Court.
30. The 1st Respondent did also submit that as it stands now, the Judgement pronounced on the 19.06.2025 is valid and binding and therefore he ought to enjoy the fruits of the said judgement pending the hearing and determination of the Appeal.
31. The Court has indeed considered the issue of substantive loss in the two aspects identified herein.
32. On the issue of possession and/or occupation, the Court did make a finding upon hearing the testimonies of the parties herein and their witnesses that indeed the person who was and has been in occupation of the suit property from way back in 1988 is the 1st Respondent herein.
33. Based on this finding by the Court in the Judgement pronounced on the 19.06.2025, it is clear that the Applicant herein was not or has not been in occupation of the suit property as alleged in the present Application.
34. This being the scenario, there can be no execution against the Applicant that would result to him being dispossessed of any possession or occupation by the 1st Respondent herein.
35. Similarly, due to the fact that the Applicant was not or is not in occupation or possession of the suit property herein, there is no potential loss either substantial or otherwise that he stands to suffer based on the Orders issued in the Judgement dated 19.06.2025.
36. Order No. D specifically prohibited the Applicant from interfering with the 1st Respondent's occupation and

possession of the suit property based on the finding that he was not in occupation and/or possession of the same.

37. In essence, this Court having made a finding that the Applicant is not or has not been in occupation and possession of the suit property, there is no loss that will be occasioned to him if the Stay of Execution Orders are not granted pending hearing and determination of his Appeal.
38. On the second aspect of the ownership documents held by the 2nd Respondent, it is not in doubt that the Applicant herein was the person registered as the legal and legitimate owner thereof.
39. However, on the 19.06.2025, the Court did Order that the Applicant's registration as the lawful and legitimate owner of the suit property was unprocedural, irregular and unlawful.
40. Consequently, the Court on the 19.06.2025 did declare the suit property to belong to the 1st Respondent and the Applicant's registration be cancelled thereof.
41. The significance of the Court's determination in its Judgement pronounced on the 19.06.2025 was that the Applicant herein no longer had any ownership rights over the suit property thereafter.
42. It was on the basis of this understanding that the Court did direct the cancellation of the Applicant's name as the lawful and legitimate owner of the suit property and the registration of the 1st Respondent as the true and lawful owner of the same.
43. The intention of the Court in its Order No. C in the Judgement pronounced on the 19.06.2025 was that the cancellation of the Applicant's registration on the suit property was immediate and not in future.

44. As such, the interpretation of this Court is that as at the time the Applicant did file the present Application on the 09.07.2025, the Applicant was no longer the registered owner of the suit property and the person who was the legitimate owner was the 1st Respondent.
45. According to the Court's proceedings, the Applicant was granted a Stay of 30 days from 20.06.2025 to prepare, file and serve a formal application thereof.
46. The present Application was then filed on the 09.07.2025 before the lapse of the 30 days stay which would end on the 20.07.2025.
47. On the 30.07.2025 when the present Application came for inter-parte hearing, an Order of Stay of Execution for Order No. B and C was granted pending the hearing and determination of the same.
48. This being the scenario, the Applicant's prayer for Stay of Execution of the Judgement filed on the 09.07.2025 had been overtaken by events as the Applicant was no longer the registered owner of the suit property beyond 19.06.2025 capable of having such ownership preserved by this Court through an Order of Stay of Execution.
49. The only aspect of the Judgement pronounced on the 19.06.2025 that would be Stayed pursuant to the present Application filed on the 09.07.2025 was the issuance of the formal Certificate of Lease in favour of the 1st Respondent by the 2nd Respondent which was to happen within 30 days from the date of pronouncing the Judgement.
50. Keeping in mind that the 1st Respondent after the issuance of the ownership documents by the 2nd Respondent there is a possibility of further alienation, it only fair to preserve the subject matter on appeal by granting an Order of Stay of execution directing the 2nd Respondent from implementing

Prayer No. B of the Judgement pronounced on the 19.06.2025.

Application filed without unreasonable delay

51. The second requirement is that the Application for stay must be made without unreasonable delay.
52. The impugned Judgment herein was delivered on 19.06.2025 and the Applicant did lodge the Notice of Appeal on the 26.06.2025.
53. Thereafter, the Applicant did file the present Application on the 09.07.2025 which is approximately 20 days from the date of the Judgment which is within time and therefore, there was no delay in making the same.

Security for the due performance of the decree

54. On the requirement of security, the 1st Respondent proposed that the Applicant be directed to deposit the sum of KShs.22,500,000/- being assessed rental income for 5 years which he anticipates is how long the Appeal may last, as security for the due performance of the decree.
55. The Applicant opposed this sum, claiming that it is not only unjustified, but also meant to stifle and/or punish the Applicant from exercising his right of appeal.
56. The Applicant on his part claimed that the suit parcel itself is sufficient security for stay of execution pending appeal, but reiterated that he was still willing to abide by any conditions the court may fix on the order of stay.
57. Unfortunately, as this Court had held earlier, the Applicant's ownership of the suit property was cancelled through the Judgement pronounced on the 19.06.2025.

58. As such, the Applicant cannot offer the suit property as a security for costs pending Appeal because it belongs to the 1st Respondent.
59. On the other hand, the 1st Respondent's proposal that the Applicant should deposit a sum of Kenya Shillings Twenty Million Five Hundred Thousand (KShs.22,500,000/-) based on the project rental collections for the next five years is not justifiable in law.
60. The Costs which should be deposited in Court should be looked at in terms of the expenses that could be incurred by the Respondent during the Appeal process and not the loss that would arise as the appeal is pending.
61. With this understanding in mind, the Court is of the considered view and finding that a sum of Kenya Shilling One Million (Kshs.1,000,000/-) in terms of Costs for security is sufficient.

ISSUE NO. 2 - WHO SHALL BEAR THE COSTS OF THIS APPLICATION?

62. On costs, the Court is of the view that the same should abide the outcome of the main appeal.

CONCLUSION

63. In conclusion therefore, this court makes the following orders in determination of the Notice of Motion Application dated 9th July, 2025; -

A. THE NOTICE OF MOTION DATED 09.07.2025 IS PARTIALLY ALLOWED.

B. THE STAY OF EXECUTION ORDER ISSUED ON THE 30.07.2025 AS AGAINST PRAYER NO. C OF THE JUDGEMENT DATED 19.06.2025 BE AND IS HEREBY VACATED FORTHWITH.

C. THE STAY OF EXECUTION ORDER ISSUED ON THE 30.07.2025 AS AGAINST PRAYER NO. B OF THE JUDGEMENT DATED 19.06.2025 BE AND IS HEREBY CONFIRMED PENDING THE HEARING AND DETERMINATION OF THE APPEAL FILED BY THE APPLICANT.

D. THE APPLICANT BE AND IS HEREBY ORDERED TO DEPOSIT A SUM OF KENYA SHILLINGS ONE MILLION (KSHS 1,000,000/-) TO THE COURT WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS RULING AS SECURITY FOR COSTS PENDING THE HEARING AND DETERMINATION OF THE APPEAL.

E. THE COSTS OF THE PRESENT APPLICATION WILL ABIDE THE OUTCOME OF THE PENDING APPEAL.

DATED, SIGNED and DELIVERED in ELDORET this 21ST DAY OF JANUARY, 2026.

**EMMANUEL.M. WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Plaintiff: Mr. Ndegwa holding brief Mr. Odunga for the Plaintiff/1st
Respondent

Defendant: Ms. Chebet holding brief Mr. Yego for 1st
Defendant/Applicants
Ms. Odeyo for the 2nd Defendant