

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT**  
**SIAYA**  
**ELC APPEAL NO. E071 OF 2025**

**GERALD ODHIAMBO LAMBA.**  
.....**APPELLANT**

**-versus-**

**PAMELA AOKO OTIENO (Sued and the Administrator  
of the Estate of the late Edwina Atieno Murai). .....1<sup>ST</sup>  
RESPONDENT**

**PAMELA AOKO OTIENO.....2<sup>ND</sup>  
RESPONDENT**

**ELIJAH OKELLO.. .....3<sup>RD</sup>  
RESPONDENT**

**THE SIAYA COUNTY LANDS REGISTRAR.....4<sup>TH</sup>  
RESPONDENT**

**RULING**

1. The subject of this ruling is the Notice of Motion application dated 25/11/2025 seeking the following verbatim orders;-

- 1) THAT this application be certified as urgent, service be dispensed with and the same be heard ex parte in the first instance for purposes of prayer 2 below;
- 2) THAT pending the hearing of this Application interpartes, a Conservatory Order do issue staying

execution of the Judgment and Decree of the Honourable Court (Hon. Benjamin Limo) delivered on 07.11.2025 in Siaya MCELC E090/2023: Gerald Odhiambo Lamba -Vs- Pamela Aoko Otieno (Sued as the Administrator of the Estate of the late Edwina Atieno Murai) & Others and further, that an Injunction do issue restraining the Respondents by themselves of their assigns or agents from evicting the Appellant or interfering with his possession of the suit property, East Gem/Nyamninia/1351 and that the OCS Yala Police Station and the Sub-County Police Commander Yala, and County Police Commander, Siaya to ensure compliance.

- 3) THAT pending the hearing and determination of this Application, a Conservatory Order do issue staying execution of the Judgment and Decree of the Honourable Court (Hon. Benjamin Limo) delivered on 07.11.2025 in Siaya MCELC E090/2023: Gerald Odhiambo Lamba -Vs- Pamela Aoko Otieno (Sued as the Administrator of the Estate of the late Edwina Atieno Murai) & Others and further, that an Injunction do issue restraining the Respondents by themselves of their assigns or agents from evicting the Appellant or interfering with his possession of the suit property, East Gem/Nyamninia/1351 and that the OCS Yala Police Station and the Sub-County Police Commander Yala to ensure compliance.

4) THAT pending the hearing and determination of this Appeal, a Conservatory Order do issue staying execution of the Judgment and Decree of the Honourable Court (Hon. Benjamin Limo) delivered on 07.11.2025 in Siaya MCELC E090/2023: Gerald Odhiambo Lamba-Vs- Pamela Aoko Otieno (Sued as the Administrator of the Estate of the late Edwina Atieno Murai) & Others and further, that an Injunction do issue restraining the Respondents by themselves of their assigns or agents from evicting the Appellant or interfering with his possession of the suit property, East Gem/Nyamninia/1351 and that the OCS Yala Police Station and the Sub-County Police Commander Yala to ensure compliance.

5) Costs

2. The application is premised on the grounds on its face and the depositions in the supporting affidavit sworn by Gerald Odhiambo Lamba the appellant.
3. Highlighting the prayers granted in the judgement of the trial court the appellant avers he is greatly aggrieved by the Judgment and has filed an Appeal against the same which is arguable. The grounds of appeal are listed at paragraph 9 of the supporting affidavit. That the trial court made significant errors of law and fact including cancelling the entry in the name of a non-party to the suit, one DYMPHYNA SHIYAYO MURAI without according her a hearing. it is averred that the

applicant has been in possession of the property for over 10 years and has presently cultivated maize thereon.

4. It is alleged that on 12.11.2025, the Respondents invaded the property with the intention of eviction without an order of eviction. The same was reported to Yala Police Station under OB No. 12/12/11/2025. Therefore, the Applicant is faced with imminent execution of the Decree owing to the decision and shall be greatly prejudiced should execution issue. That in the absence of this courts urgent intervention there is a real risk and likelihood that execution shall issue.

#### **Replying affidavit**

5. The application was opposed by the 3<sup>rd</sup> respondent. It is stated that the application herein is malicious, vexatious, incompetent, improper before court and made in bad faith to hinder the applicant from realizing the fruits of the judgment delivered on 7/11/ 2025.
6. It is stated conservatory orders ordinarily must be specific, identifiable and on an existing property or properties to effectively preserve the 'status quo' and prevent irreparable harm. However, **LR. No. EAST GEM/NYAMNINIA/1351** is non - existent having been sub - divided on 17/10/2022 by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent into land parcels. **LR. No. EAST GEM/NYAMNINIA/2845 & 2846**. Issuing orders relating to a non - existent or unidentifiable piece of land would be vague and unenforceable. Copies of the relevant Green Card to

original land parcel **LR. No. EAST GEM/NYAMNINIA/1351** and sub divisions **LR. No. EAST GEM/NYAMNINIA/2845 & 2846** are attached.

7. The deponent states he is the bonafide owner of land parcel **L.R NO. EAST GEM/NYANDIWA/2845; 2846** which he legally purchased from the 1/2<sup>nd</sup> Respondent respectively from PAMELA AOKO OTIENO on 10/5/2023 and PETER TITUS ATITO through separate binding written land sale agreements leading to transfer and registration in his name on 15/5/2023 and 21/6/2023 and title deeds issued. That he conducted due diligence of the properties at Siaya Land's Registry (Ardhi House) as required by the basic principles of the law and confirmed registration of the vendors as owners.
8. The 3<sup>rd</sup> respondent states he had and still has possession and occupation of these lands ever since he purchased them. That the Applicant herein has never had possession and occupation of the then original land parcel **LR. No. EAST GEM/NYAMNINIA/1351** nor its sub divisions. Moreover, he has not presented proof of ownership of the claimed original land parcel LR. No. EAST GEM/NYAMNINIA/1351.
9. The 2<sup>nd</sup> respondent too opposed the application vide a replying affidavit sworn on 17/11/2025. Her depositions echo the foregoing except they relate to land parcel **LR. No. EAST GEM/NYAMNINIA/1351**. She depones that the mother title giving rise to the subdivisions belong to her mother Edwina Atieno Murai who during adjudication was the 1<sup>st</sup> registered proprietor in October 1993. That the applicants

alleged wife illegally caused her registration thereof as joint proprietor and which was cancelled by the Land Registrar Siaya.

10. The deponent states that after her mothers date she took out letters of administration was confirmed as administrator on 10/07/2019 and thereafter caused transfer to herself and subdivided the land into the subdivisions herein and disposed as per the foregoing depositions by the respondents.
11. It is averred that the applicant has not illustrated the prejudice they will suffer and the status quo should be as at the time of the judgement.

### **SUBMISSIONS**

12. The application was disposed of by way of written submissions. The applicants submissions are dated 4/12/2025 and the Respondents 4/12/2025.

### **ANALYSIS AND DETERMINATION**

13. I have read the affidavits sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions of the learned counsels appearing in the matter. The issue for determination is whether the application is merited.
14. The application has been filed under the provisions of order 42 Rule 6 and Order 43 Rule 2 of the Civil Procedure Rules 2010.

15. The principles guiding the grant of a stay of execution pending appeal are laid out under Order 42 rule 6(2) of the **Civil Procedure Rules** which provide; -

**“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.**

16. Arising from the above provisions the power to grant stay of execution pending appeal is an exercise of discretion of the court on sufficient cause being shown by the Applicant that substantial loss may result to the applicant if the orders are denied; the application should be made without undue delay and the court will impose such security as the court may impose for the due performance of any decree or order as may ultimately be binding on the Applicant. See **Amal Hauliers Limited Vs Abdulnasi Abukar Hassan (2017) eKLR & Butt Vs Rent Tribunal (1982) KLR 417.**

17. The court in James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, stated as follows; -

***“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, it does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of Silverstein N. Chesoni [2002] 1KLR 867, and also in the case of Mukuma V Abuoga quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:***

**“...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”**

18. The decision judgement of the trial court was delivered on 07.11.2025. The present application was filed on 12.11.2025 which was within less than two days discounting the weekend. The court therefore agrees with the applicant that filing of the present application was done promptly and there was no inordinate delay in filing the same.
19. Substantial loss is what I will focus on since it is the substantive requirement for an applicant to demonstrate to the court. What state of affairs then would occasion substantial loss to the applicant? His case is that he has been in possession for over 10 years and had actually recently cultivated maize thereon and is likely to be evicted therefrom. Counsel in his submission places reliance on the fact that the invasion and attempted eviction of the applicant from the property was reported to the police vide OB No. 12/12/11/2025.
20. The respondent at paragraph 8 of his replying affidavit also contends that he has been in possession ever since he purchased the same in May and June 2023 and the applicant has never had occupation.

21. However at paragraph 10 of the said affidavit I have noted the respondents proposition that the status quo over the suit properties should be maintained over parcels 2845 & 2846 and that conservatory orders cannot issue on a non-existent plot. I would not as a court worry so much over this for the reason that the registration of the parcel in the names of the vendors who proceeded to subdivide the land is being contested and stated to be fraudulent. This history of the parcel does not die with the subdivision in my view and even the occupation. It has been urged that the applicant has not provided proof of ownership of the mother title. All these are issues to be canvassed at the hearing of the appeal on merit.
22. I note that the Respondent other than stating the above, he does not specifically deny the fact that there was an intended or attempted eviction. The applicant has placed before court an OB pointing towards the same. As to the prejudice he will suffer it is deponed that he is being delayed from enjoying the fruits of his judgement but yet he insists he is in possession. It would appear that before the judgement there was some peace and based on the respondents depositions the court agrees this can be maintained.
23. Orders of status quo need not necessarily be prayed by the parties but can be given by the court based on the circumstances of a suit and under its general jurisdiction. This was outlined in the case of **Thugi River Estate**

## **Limited & another Vs National Bank of Kenya Limited & 3 others [2015] eKLR**

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs.’

24. I think the responsibility of the court is to ensure that the appeal is not rendered nugatory. It is also noteworthy that as per the Register Elijah Okello still features as the registered proprietor.
25. Having anxiously considered the prayers sought I think conservatory orders should issue to the extent that the execution of the judgement can be safely stayed without prejudicing any of the parties. The status quo on the

register shall be maintained to the benefit of the decree holder since they still hold title on the subdivisions.

26. The only remaining issue would be the allegations of eviction which I have already discussed. With regard to the suit property on the ground the status quo shall also be maintained effectively ensuring that there is no eviction that should take place on the part of either of the parties in this application.
27. The following orders therefore issue to dispose of Notice of Motion application dated 25/11/2025.
  - 1) THAT pending the hearing and determination of this Appeal, a Conservatory Order do issue staying execution of the Judgment and Decree of the Honourable Court (Hon. Benjamin Limo) delivered on 07.11.2025 in Siaya MCELC E090/2023: Gerald Odhiambo Lamba-Vs- Pamela Aoko Otieno (Sued as the Administrator of the Estate of the late Edwina Atieno Murai) & Others and further.
  - 2) That there shall be no eviction of the Appellant by the Decree holder Respondents by themselves or their assigns or agents pending the determination of the present appeal.
  - 3) The Appellant on the other hand shall keep the peace and further not construct any developments on the suit property **East Gem/Nyamninia/1351** and or the subdivisions **LR. No. EAST GEM/NYAMNINIA/2845**

& **2846** from the date of this ruling pending determination of the appeal.

4) Costs are discretionary and I will grant the same to the Respondent

Orders accordingly.

**HON. JUSTICE A. E. DENA**

**JUDGE**

**29/01/2026**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:**

Mr. Obuya for the Applicants/Appellants

Mr. Ochanyo for the respondents

Court assistant: Ishmael Orwa