



**Mshono & another v Land Registry Kilifi & 3 others (Environmental and Land Originating Summons 8 of 2021) [2026] KEELC 308 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 308 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 8 OF 2021**

**JO OLOLA, J  
JANUARY 29, 2026**

**BETWEEN**

**SAMSON LEBA MSHONO ..... 1<sup>ST</sup> PLAINTIFF  
NDOKO MSHONO LEWA (ADMINISTRATORS OF THE ESTATE OF  
MISHONO MWAHUNGA - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**THE LAND REGISTRY KILIFI ..... 1<sup>ST</sup> DEFENDANT  
THE DISTRICT SURVEYOR KILIFI ..... 2<sup>ND</sup> DEFENDANT  
MTWAPA ENERGY CENTRE ..... 3<sup>RD</sup> DEFENDANT  
THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 21<sup>st</sup> February 2025, the Honorable the Attorney General (the 4<sup>th</sup> Defendant/Applicant) prays for the following:
  1. Spent;
  2. That there be a temporary stay of proceedings and the stay of execution of the Judgment of 19<sup>th</sup> September 2024 pending the hearing and determination of the Application herein;
  3. That there be a temporary stay of proceedings and the stay of execution of the Judgment of 19<sup>th</sup> September 2024 pending the hearing and determination of the intended Appeal by the Applicant;
  4. That this Honourable Court do issue such further orders or directions that it may deem fit to grant in the interest of justice; and



5. That the costs of this application be in the cause.
2. The application is supported by an Affidavit sworn by Mohammed Shuqry, Centre Manager of Mtwapa Energy Centre (the 3<sup>rd</sup> Defendant) and is premised on the grounds that:
  - i. The trial court delivered a Judgment in this matter in favour of the Plaintiffs on 19<sup>th</sup> September 2024, and have filed a Notice of Appeal.
  - ii. The Defendants were served with a Notice from the Land Registrar to effect the Judgment.
  - iii. The Defendants' Appeal raises substantial issues including the fact that the trial Court did not take into account the submissions filed by the Defendants; and
  - iv. Unless the stay orders are not urgently granted the intended Appeal will be an exercise in futility.
3. Samson Leba Mshono and Ndoko Lewa Mshono (the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs) are opposed to the application. By their Grounds of Opposition dated 4<sup>th</sup> April 2025, the Plaintiffs assert that:
  1. The Applicant has not met the legal threshold for granting the orders sought; and
  2. There are no pending proceedings capable of being stayed since this is a concluded case.
4. I have carefully perused and considered the application and the grounds raised in opposition thereto. I have similarly perused and considered the rival submissions placed before me by the Learned Advocates representing the parties.
5. By their application before the court the 4<sup>th</sup> Defendant prays for an order of temporary stay of proceedings and the stay of execution of the judgment issued by this court on 19<sup>th</sup> September 2024 pending the hearing and determination of an intended Appeal. It is the Defendants' case that their Appeal raised substantial issues and that unless the orders of stay are granted the Appeal will be an exercise in futility.
6. As properly stated by the Plaintiffs, the proceedings herein had come to an end on 19<sup>th</sup> September 2024 when judgment was rendered herein and there were no longer any proceedings that could be stayed as sought by the Defendants/Applicants.
7. In regard to an order of stay of execution, Order 42 Rule 6 of the Civil Procedure Rules provides as follows:
  - “ 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.”

8. In the case of Butt –vs- Rent Restriction Tribunal (1982) KLR 417, the Court of Appeal gave guidance on how a Court should exercise discretion while dealing with an application for stay of execution and held that:

- “ 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal;
- 2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
- 3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
- 4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal; and
- 5. The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”

9. By their suit as filed herein, the Plaintiffs had accused the 3<sup>rd</sup> Defendant - Mtwapa Energy Centre, of illegally and unlawfully trespassing, encroaching onto and fencing off the parcel of land known as Kilifi/Mtwapa/5052 without the Plaintiffs’ authority or consent. It was further their case that sometime in the year 2015, the Plaintiffs had requested the Land Registrar Kilifi to visit the suit land for purposes of boundary identification and marking and that in the Registrar’s Report dated 27<sup>th</sup> September 2019, the Registrar had established as a fact that the 3<sup>rd</sup> Defendant had encroached onto the Plaintiff’s parcel of land.

10. As it turned out, the 3<sup>rd</sup> Defendant is a Government entity dealing with matters of renewable energy under the Ministry of Energy. The centre which occupies 4 parcels of land totalling 8.32 Ha in Kilifi asserted that it had purchased the said parcels of land using taxpayers money and had set up the land for public use.

11. Having looked at the decree issued herein, it was apparent to me that the effect of the judgment will not only alter the boundaries of the parcels of land but also the ownership of part of what is now public land. In the circumstances of this case, it is in my view prudent to grant a stay of execution of the decree



to prevent a situation where a portion of the property may end up in the hands of another party before the determination of the Appeal.

12. In the premises, I am persuaded that it is in the public interest to grant an order of stay of execution of the judgment delivered on 19<sup>th</sup> September 2024 and I hereby grant an order in terms of Prayer No. 3 thereof.
13. The costs of the application shall be in the Appeal.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 29<sup>TH</sup> DAY OF JANUARY, 2026**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No appearance for the Plaintiffs/Respondents
- c. Mr. Penda Advocate for the Defendant/Applicants

