



**Menelik House Limited v Mbugua & another (Environment and Land
Case 458 of 2017) [2026] KEELC 200 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 200 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 458 OF 2017**

JG KEMEI, J

JANUARY 21, 2026

BETWEEN

MENELIK HOUSE LIMITED PLAINTIFF

AND

JOHN MBUGUA 1ST DEFENDANT

FRANCIS ODUMBE OSODO 2ND DEFENDANT

(In respect of the 1st Defendants/Applicants application dated 5/5/25)

RULING

1. Before the court is the application dated 5/5/25, filed by the 1st Defendant/Applicant, seeking, in the main, the orders staying execution of the judgment delivered on 29/4/25 in favour of the 1st Respondent/Plaintiff, declaring it the legal owner of all the property known as L R NO 1/580 (suit land), pending the hearing and determination of the intended appeal.
2. The Applicant states that, dissatisfied with the aforementioned court judgment, he has commenced the process of lodging an appeal with the appellate court. The appeal is substantively arguable and has a high likelihood of success, as demonstrated by the Draft Memorandum of Appeal annexed thereto. He asserts that, should the stay of execution not be granted, the appeal will be rendered nugatory by the imminent enforcement of the judgment, causing him to suffer irreparable harm. He urges the court to stay the execution of the judgement.
3. The 1st Respondent opposed the application on the grounds that the Applicant's motion is an abuse of the court's process, having filed a similar application in Civil Appeal No. E332 of 2025, John Mbugua Vs Menelik Limited, and therefore should be struck out ex parte.
4. In a subsequent affidavit, the Applicant acknowledged filing the appeal and the application for a stay of execution. However, he contended that, as the appeal and the application have yet to be



adjudicated, he retains the right to submit another application before this court, as permitted by law. Specifically, an application for a stay of execution of the judgment may be filed either in the trial court or at the appellate level. That the urgency of the matter arises from the Plaintiff/Respondent's application seeking to adopt the Certificate of Costs as a decree, with the intent to execute against the first Defendant/Applicant. Consequently, he argued that there is a pressing need to approach the trial court under these circumstances. Inter alia, the Applicant stated that he faces the risk of execution regarding this matter.

5. Parties elected to canvass the application by way of written submissions, which I have read and considered.
6. The key issue for determination is whether the Applicant is entitled to the orders sought.
7. It is trite law that an appeal does not operate as an automatic stay of execution. The conditions a party must establish for the court to order a stay of execution are set out in Order 42 Rule 6 of the Civil Procedure Rules. An Applicant for an order staying the execution of a decree or an order pending appeal is required, under Order 42 Rule 6(2), to satisfy the following conditions, namely:
 - a. That substantial loss may result to the applicant unless the order is granted.
 - b. That the application has been made without unreasonable delay, and
 - c. That such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.
8. These principles were enunciated in *Butt vs Rent Restriction Tribunal* [1979] KLR where the Court of Appeal stated what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that: -
 - a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
 - b. Secondly, 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 the appeal court reverse the judge's discretion.
 - c. Thirdly, 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.
 - d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. 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 of costs as ordered will cause the order for stay of execution to lapse.
9. Execution is a lawful process and it is not a ground for granting stay of execution. The applicant is required to show how execution shall irreparably affect him or will alter the status quo to his detriment therefore rendering the appeal nugatory.
10. Before delving into the main issue, which is whether the application is merited, I will first of all determine the objection raised by the Plaintiff/Respondent, which is that a similar application was previously filed in the Court of Appeal by the Applicant, thereby constituting an abuse of process. I will therefore determine this objection accordingly as follows;



11. It is a well-established principle that once a party has invoked the jurisdiction of a higher court, it should refrain from re-engaging the jurisdiction of a Lower Court. Whilst I concur with the Applicant that a party may apply for a stay either to the trial court or to the appellate court, however, once an application for stay of execution is filed in the higher court, the Lower Court is precluded from entertaining a similar application by the doctrine of sub judice unless the party demonstrates that the application in the other court has been withdrawn. This doctrine is explicitly affirmed by Section 6 of the Civil Procedure Act (CPA), which states the following.

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

12. Ultimately, I conclude that the application before this court is sub judice. Given that there would be no advantage in staying the execution, the interests of justice necessitate its dismissal on the grounds of abuse of court process.

13. I order that costs shall be in favour of the 1st Respondent /Plaintiff.

14. orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF JANUARY 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Ms. Kimutai for the 1st Defendant

N/A for the Plaintiff and the 2nd Defendant

CA- Ms. Yvette Njoroge

