



**Nguramuk v Kilekwang (Environment and Land Case E027 of 2023)
[2026] KEELC 261 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 261 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E027 OF 2023**

CK NZILI, J

JANUARY 28, 2026

BETWEEN

LIMANGURA NGURAMUK PLAINTIFF

AND

JOSEPH KILEKWANG DEFENDANT

RULING

1. The application before the court is dated 16/10/2025. The defendant seeks a stay of execution of the judgment of this court pending the hearing and determination of Eldoret Civil Appeal No. E058 of 2025. The reasons are contained on the face of the application and in the supporting and supplementary affidavits sworn by Joseph Kilekwang on 4th and 11th November, 2025.
2. The application is opposed through a replying affidavit of Limangura Nguramuk, sworn on 4/11/2025. It is deposed that the respondent has been in possession of the suit land as the registered owner since 1/7/1998; the application was filed after 4 months; no sufficient cause for substantial loss has been demonstrated; and that the security for due performance of the decree has not been offered.
3. The respondent gives an undertaking not to sell, charge, or in any way affect the title, once it gets restored, as per the judgment of 17/6/2025, pending the hearing of the appeal.
4. The applicant relies on written submissions dated 12/11/2025, emphasizing that he has met the conditions of stay as set out in the case law of Absalom Dova -vs- Tarbo Transporters [2013] eKLR.
5. On the other hand, the respondent relies on written submissions dated 5/11/2025. Reliance is placed on James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2013] eKLR, Jaber Mohsen Ali & Another -vs- Priscilla Boit & Another [2014] eKLR, Jonathan Kiprotich Barsulai -vs- John Kiprop Chemweno & Others [2018] eKLR, and Arun C. Sharma -vs- Ashana Raikundalia [2014] eKLR.



6. A party seeking a stay of execution from the court appealed from has to meet the conditions in Order 42 Rule 6 of the Civil Procedure Rules. An application for a stay must be made timeously. In *Jaber Mohsen (supra)*, a delay of 35 days was held inordinate and unexplained. In *Johnathan Kiprotich Barsulai (supra)*, a delay of 3 days before expiry of the notice of 45 days was termed inordinate.
7. In this application, the delay is 4 months. No attempts to have been made to explain the reasons for the same by way of a supplementary or supporting affidavit. Equity aids the vigilant and not the indolent. Delay also defeats equity. A court of equity does not aid an indolent person who has slept on his rights and acquiesced for a great length of time, as held in *Benjoh Amalgamated Ltd & Another -vs- Kenya Commercial Bank Ltd [2014] eKLR*.
8. Substantial loss is the cornerstone of a stay. It has to be demonstrated with cogent and valid evidence, as held in *James Wangalwa (supra)*, execution by itself does not amount to substantial loss. What has to be prevented from happening is what an order of stay seeks to preserve.
9. In this application, a recent official search certificate has not been provided to show the registration status of the suit land. The applicant has not tendered evidence to dispute the assertion by the respondent, on who has been in occupation of the suit land since 1998 to the present. Evidence of what developments the applicant has made on the land, which risk execution or interference with is lacking.
10. On security for the due realization of the decree, should the appeal not succeed, it is not enough to allege the willingness to offer the same, and leave it to the court to suggest which is suitable security for a party. In this case, the applicant has not at the very least offered to deposit the original title deed before the court for preservation as a good gesture to comply with the decree of the court.
11. In *Arun C. Sharma (supra)*, security under Order 42 Rule 6 of the Civil Procedure Rules acts as security for the due performance of such a decree, should the appeal not succeed.
12. The power to grant a stay is discretionary. The applicant has to demonstrate special circumstances that sway the discretion of the court in his favour. As held in *Samvir Trustee Ltd -vs- Guardian Bank Ltd [2007] eKLR*, the court weighs, or balances the scales of justice by ensuring that an appeal is not rendered nugatory, while at the same time, ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgment. The court, therefore, has to balance the rights of the two parties.
13. In this application, the respondent has undertaken to preserve the title and the land pending the hearing and determination of the appeal. In *Dodhia -vs- Wafula [2025] KECA 2172 [KLR] (10th December 2025)*, the court held that, to allow the stay orders was like reversing the orders of the trial court at the interlocutory stage, yet the respondent had intimated it had no intention of disposing of the suit property. The court said that the focus should be on preserving the ends of justice, which includes letting a deservedly winning party enjoy the fruits of their judgment.
14. Entries in the register of titles to effect the decree are what is at stake. Such entries cannot amount to substantial loss. The applicant has a right to have the reversal of the title register entries if he succeeds on appeal. The same cannot be termed as irreversible in law.
15. The upshot is that I find the application lacking merit. It is dismissed with costs.
16. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 28TH DAY OF JANUARY 2026.

In the presence of:



Court Assistant – Dennis

Ndarwa for Kiarie for respondent - present

Lowaskou for applicant - absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

