



REPUBLIC OF KENYA



KENYA LAW
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**Njogu & 3 others v Waigera (Environment and Land Appeal
E004 of 2025) [2026] KEELC 330 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 330 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E004 OF 2025**

**JM ONYANGO, J
JANUARY 28, 2026**

BETWEEN

**PAUL NJOGU 1ST APPELLANT
VINCENT GITOBU GICHUNGE 2ND APPELLANT
JOHN WAMBUGU 3RD APPELLANT
SUNSET PARK ESTATE HOMEOWNERS ASSOCIATION 4TH APPELLANT**

AND

ALLAN GICHUKI WAIGERA RESPONDENT

RULING

1. This Court has been tasked with determining the Appellants/Applicants Notice of Motion dated 8th September 2025 in which the Applicants seek the following Orders:
 1. Spent...
 2. That this Honourable Court grants an interim stay of execution of the judgment and decree and all other consequential proceedings and/or orders issued and emanating from the Judgment of the Honourable Chembeni L. Adis, Senior Resident Magistrate on 11th August 2025 in Ruiru M.C.ELC No. E220 of 2024, pending the hearing and determination of this application ex parte.
 3. That this Honourable Court does order and interim stay of execution of the judgment and decree and all other consequential proceedings and or orders issued and emanating from the Judgment of the Honourable Chembeni L. Adis, Senior Resident magistrate on 11th August 2025 in Ruiru M.C.ELC No. E220 of 2024, pending the hearing and determination of this application inter-partes.



4. That this Honourable Court does order and interim stay of execution of the judgment and decree and all other consequential proceedings and or orders issued and emanating from the Judgment of the Honourable Chembeni L. Adis, Senior Resident magistrate on 11th August 2025 in Ruiru M.C.ELC No. E220 of 2024, pending the hearing and final determination of the Appeal.
5. That the costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the supporting affidavit of Vincent Gitobu Gichunge sworn on even date.
3. The Applicants contend that they have lodged an appeal against the the Judgment of the Honourable Chembeni L. Adis, Senior Resident Magistrate on 11th August 2025 in Ruiru M.C.ELC No. E220 of 2024 which raises weighty legal issues with very high chances of success.
4. The Applicants further contend that the Respondent has commenced construction activities on L.R.No. 17564/514 which they allege is in blatant disregard of the Sunset Park Estate Construction Guidelines, thereby undermining the uniform development standards designed to preserve the collective value and character of properties within the estate.
5. They further contend that the Respondent’s ongoing construction on L.R. No. 17564/514 (hereinafter ‘the suit property’) poses a real and imminent risk of rendering the appeal nugatory, as the continued development would alter the character and condition of the subject property in a manner that cannot be adequately reversed or remedied should the appeal ultimately succeed.
6. In their replying affidavit sworn on 28th September 2025, the Respondent denounces the application for stay of execution as an abuse of the Court’s process. He asserts that he is the absolute and indefeasible proprietor of the suit property, a title shielded by law, and contends that the Applicants have disclosed no lawful claim, interest, or right capable of justifying any restraint upon the enjoyment or enforcement of the judgment in his favour.
7. The Respondent further maintains that the Applicants’ allegations of trespass were finally and conclusively determined by the trial court and cannot be revived under the cloak of interim relief pending appeal.
8. The Respondent contends that the Applicants have failed to demonstrate any substantial or irreparable loss that would arise absent a stay, and any injury alleged is, at most, one readily quantifiable and adequately compensable by an award of damages.
9. The parties were directed to proceed by way written submissions which they duly filed.

Issues for determination

10. Having considered the application together with the supporting affidavit, the replying affidavit in opposition, the parties respective written submissions and the relevant authorities, a singular issue emerges for determination: Whether the Appellants have shown sufficient cause to justify a stay of execution pending appeal.

Analysis and Determination

11. The singular issue before this Court is whether the Appellants have established sufficient cause to justify a stay of execution pending the determination of the appeal. This inquiry is not abstract; it



- demands a careful examination of the facts, the rights claimed, and the practical consequences of enforcing the impugned judgment.
12. The Court must ask whether the enforcement of the decree would inflict harm upon the Appellants that is substantial, irreparable, and incapable of adequate redress by an award of damages, whether the Respondent's interests can be adequately secured, and whether the application has been made with due diligence and without unreasonable delay.
 13. The law governing stay of execution pending appeal is contained in Order 42 Rule 6 of the Civil Procedure Rules, which 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.”
 14. In essence, the grant of a stay of execution is not automatic; it is an extraordinary remedy entrusted to the Court's discretion.
 15. Under Order 42 Rule 6, a stay will issue only if the applicant demonstrates sufficient cause, showing that enforcement of the decree would occasion substantial or irreparable harm that cannot be remedied by damages, that the application has been made without unreasonable delay, and that the interests of the decree-holder can be adequately safeguarded by appropriate security.
 16. These conditions, taken together, ensure that the Court strikes a just balance between the rights of the party entitled to immediate enforcement and the need to protect the appellate process from being rendered futile.
 17. For the Applicants to succeed in the present application, the burden rested squarely upon them to demonstrate that the conditions prescribed under Order 42 Rule 6 of the Civil Procedure Rules were satisfied.
 18. The purpose of a stay of execution, after all, is not to grant indulgence, but to preserve the very substratum of the case, ensuring that the appeal, when heard, remains effective and capable of yielding meaningful relief.



19. On the question of substantial loss, learned counsel for the Applicants submits that the Applicants reside in a regulated estate comprising over fifty members, and that should the Respondent be allowed to continue construction on the suit land, *the constitution* and governance of the estate would be irreparably compromised, throwing the estate into confusion, disorder, and a state inimical to the collective interests of its members.
20. Conversely, learned counsel for the Respondent submits that the Applicants have failed to establish that they will suffer substantial loss if a stay is not granted.
21. While the Applicants' apprehensions are noted, the Court must assess whether these allegations amount to substantial loss.
22. In *Machira t/a Machira & Co Advocates v East African Standard* [2002] KEHC 1167 (KLR) the Court addressed substantial loss as follows:

“In attempting to convince a court that substantial loss is likely to be suffered so that whatever he intends to achieve by his intended recourse to some other authority will be nugatory if ultimately he prevails, the applicant is under a duty to do more than merely repeating to the court words of the relevant statutory rule or general words used in some judgment or ruling of a court in a decided case cited as a judicial precedent to guide. It is not enough merely to state that substantial loss will result, or that the appeal if successful will be rendered nugatory. That will not do.

If the applicant cites, as a ground, substantial loss, the kind of loss likely to be sustained must be specified, details or particulars thereof must be given, and the conscience of the court, looking at what will happen unless a suspension or stay is ordered, must be satisfied that such loss will really ensue and that if it comes to pass, the applicant is likely to suffer substantial injury by letting the other party proceed further with what may still be remaining to be done or in execution of an awarded decree or order, before disposal of the applicant's business (eg appeal or intended appeal).”

23. In essence, the Court must examine whether the Applicants have discharged this burden by specifying the nature and particulars of the alleged loss, demonstrating with evidence that the Respondent's continued construction is likely to inflict real and imminent harm that cannot be adequately remedied by damages, and showing that such harm would materially prejudice the outcome of the appeal.
24. However, in considering the Application, the Court has to balance the interest of the Applicants, who are seeking to preserve the status quo pending the hearing of the appeal so that his appeal is not rendered nugatory, and the interest of the Respondent, who is seeking to enjoy the fruits of his judgment.
25. The Applicants have highlighted the regulated nature of the estate, comprising over fifty members, and contend that the Respondent's ongoing construction will disrupt the estate's governance, alter its uniform character, and frustrate the collective interests of its members.
26. While these assertions outline the general consequences of the construction by the Respondent, the Court must determine whether they rise to the level of substantial loss as established in *Machira* (supra).
27. The standard of substantial loss in *Macharia* demands more than abstract apprehension; it requires the Applicants to specify the concrete ways in which the decree's enforcement will irreversibly affect the estate and provide particulars to satisfy the Court's conscience that the harm is real and imminent.



28. At this stage, the evidence before the Court shows that while there is a potential for disruption, the Applicants have not adduced precise particulars or supporting evidence quantifying the extent of the alleged harm or demonstrating that it cannot be remedied through other measures.
29. In view of the foregoing, it is not necessary for the Court to scrutinize whether the Applicants acted without undue delay, nor to consider the provision of security for the due performance of any eventual decree, for the application falters decisively on the central question of substantial loss.
30. Even in the exercise of its extraordinary jurisdiction, the Court must never act upon mere speculation. Justice is not served by preemptive restraint; it is measured by reason, evidence, and the certainty of harm. To grant relief where the possibility of loss is unsubstantiated is to elevate fear above fairness and conjecture above conscience.
31. The Court is of the view that the Applicants have not met the rigorous standard required to establish harm that is substantial, imminent, or incapable of adequate remedy by damages.
32. Accordingly, the application for stay of execution dated 8th September 2025 is hereby dismissed with costs.

It is so Ordered.

DATED, SIGNED AND DELIVERED, AT THIKA THIS 28TH DAY OF JANUARY 2026

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J. M. ONYANGO

JUDGE

In the presence of:

Mr Ngeri for the Respondent

No appearance for the Appellants

Court Assistant: Hinga

