



**Shilako v Anguba (Environment and Land Appeal E038 of 2021)  
[2026] KEELC 212 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 212 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL E038 OF 2021**

**A NYUKURI, J  
JANUARY 21, 2026**

**BETWEEN**

**DAVID KHAKABO SHILAKO ..... APPELLANT**

**AND**

**ALBERT MUCHESIA ANGUBA ..... RESPONDENT**

**RULING**

**Introduction**

1. Before court is a notice of motion dated 20<sup>th</sup> August 2025 filed by the appellant seeking orders that he be allowed to act in person; that there be stay of execution of the judgment delivered in this matter pending the hearing and determination of Kisumu Court of Appeal Civil Appeal No. E067 of 2023; and that this court grants orders to restrict the registration of further entries in regard to title for parcel No. Isukha/Shirere/6871 pending hearing and determination of Kisumu Court of Appeal Civil Appeal No. E067 of 2023. They also sought costs.
2. The application is anchored on the affidavit sworn by the applicant. The applicant's case is that judgment was delivered in this matter on 18<sup>th</sup> January 2023 and that he has since appealed against the same vide Kisumu Appeal case No. E067 of 2023. That the respondent is busy scouting for potential buyers with intention to sell the suit property and that if that happens, he will suffer irreparably and the appeal which has high chances of success will be rendered nugatory.
3. The application was opposed. The respondent filed a replying affidavit dated 9<sup>th</sup> October 2025, opposing the application. It was his case that the application is mischievous as no intended sale is demonstrated. That he is the registered proprietor of the suit property and that together with his family he has lived on the suit property from 2009 to date, a property where he interred his late wife in 2016, hence he has no plans of disposing the same. That this matter is res judicata as a similar dispute was filed being Kakamega MC ELC CASE NO. 933 OF 2018 which was decided in his favour. That the applicant has been illegally collecting rent from tenants on the suit property. That the court should



issue an order of injunction to restrain the applicant from collecting rent or interfering with the suit property. That the applicant is hostile and is under investigation from IPOA and ODPP for attacks on his family.

4. Parties filed submissions which the court has duly considered.

#### **Analysis and determination.**

5. The court has carefully considered the application, response thereto and submissions. The applicant sought inter alia, an order for leave to act in person in this matter. Order 9 Rule 9 of the Civil Procedure Rules requires a party who wishes to act in person where they had been represented by an advocate until after entry of judgment, to obtain leave of court to act in person. Legal representation is a Constitutional right and a party's prerogative. In the instant matter, the applicant has a right to represent himself and hence, the prayer that he be granted leave to appear in person is hereby allowed. Therefore, the single issue that arise for the court's determination is whether the applicant has met the threshold for grant of orders of stay of execution and inhibition.

6. An inhibition is an order prohibiting for the time being, the registration of dealings on a title, thus the same is an order in the nature of a temporary injunction.

7. Section 68 of the [Land Registration Act](#) provides for the power of the court to grant an inhibition as follows;

“The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”

8. Essentially an inhibition restrains a registered proprietor of land from exercising his or her proprietary rights by denying them the right to have dealings on their land registered.

9. Order 42 Rule 6 (1) (2) and (6) of the Civil Procedure Rules provides for the jurisdiction of the court to grant orders of stay of execution and temporary injunction pending appeal as follows;

"Stay in case of appeal [Order 42, rule 6]

- (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)

- (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.

3) .....

4) .....

5) .....

6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

10. Thus, for an application for stay of execution pending appeal to succeed, the applicant must demonstrate that they stand to suffer substantial loss if stay is not granted; that they have sought for stay without unreasonable delay and show willingness to provide security for the due performance of the decree, that may issue against them.

11. In the case of *Butt vs Rent Restriction Tribunal* [1979]KLR the Court of Appeal enumerated elements to be considered in considering an application for stay pending appeal as follows:

“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.

12. Execution is a legal process which should not be injudiciously halted. In the case of *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] eKLR, the court expressed itself thus:

“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, 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 ... 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.”

13. On the other hand, where an applicant demonstrates that they have complied with the procedures of filing an appeal, as well as satisfy the conditions for grant of temporary injunction, the court may grant orders of temporary injunction pending appeal. The conditions for grant of temporary injunction are well settled. An applicant must demonstrate an arguable case; that if the injunction is not granted they will suffer irreparable injury and the balance of convenience should tilt in favour of the applicant. (See *Giella v Cassman Brown* (1973) EA 358)
14. In view of the above provisions therefore, this court can only grant an injunction where it is exercising appellate jurisdiction in regard to a decision from the lower court and before it determines the appeal. Hence, this court has no jurisdiction to grant any injunctive orders after it has entered judgment. Thus, the prayer for inhibition to restrict registration of dealings on the suit property is declined for want of jurisdiction.
15. On the prayer for stay of execution, it is clear that the decision sought to be stayed was made in January 2023, while the application for stay was filed in August 2025 which is more than two and a half years. In my view that delay in approaching court is inordinate, and the delay has not been explained. On whether there shall be substantial loss, the judgment delivered herein was to the effect that the appeal has no merit and is dismissed. Therefore, this court did not make any positive orders capable of being stayed and hence there is nothing to be stayed.
16. In the premises, save that the applicant is granted leave to act in person, I find no merit in the application dated 20<sup>th</sup> August 2025 which I dismiss with costs to the respondent.
17. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 21<sup>ST</sup> DAY OF JANUARY, 2026**

**A. NYUKURI**

**JUDGE**

In the presence of;

Appellant in person

Respondent in person

Court Assistant: Delphine

