



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC APPEAL CASE NO. E016 OF 2025

MWITHI PETER

SAMMY.....APPELLANT/APPLICANT

=VERSUS=

SIMON

MURAUKI

KIBUIA.....

RESPONDENT

RULING

- 1.** Falling for determination in this ruling is the notice of motion dated 20/11/2025, brought by **Mwithi Peter Sammy (the applicant)**. Through it, the applicant sought the following verbatim orders:

1) That the application be certified as urgent and the same be heard ex-parte on a priority basis and service thereof be dispensed with in the first instance.

2) That the Honourable court be pleased to grant a temporary status quo of any proceedings, execution of the judgment dated 30th November, 2022 pending hearing

and determination of this instant application.

3) That the Honourable court be pleased to grant a permanent order of stay of any proceedings including execution of judgment dated 30th November, 2022 pending hearing and determination of this appeal.

4) That the Police Officer Commanding Police Station at Marimanti to employ the orders and observe peace.

5) That the costs of the application be in the cause.

6) That the Honourable court be pleased to grant any such further and or other orders as may be deemed just, appropriate and expedient in the interest of justice.

2. The application was premised on the grounds outlined in the motion and in the applicant's affidavit dated 20/11/2025. It was canvassed through brief oral submissions tendered by **Mr. Wakiaga** on 10/12/2025. The case of the applicant is that the trial court rendered a judgement against him on 30/11/2022 in **Marimanti PMC E&L Case No E005 of 2020**. The judgment related to land parcel numbers **South Tharaka/Tunyai "A"/3740** and **3877**. Aggrieved with the said judgment, he applied for a review of the judgment. Vide a ruling dated 18/9/2025, the trial court rejected his application for review. Aggrieved by the ruling, he brought this appeal. He seeks the above orders, pending the hearing and disposal of this appeal.

3. The case of the applicant is that during trial, the respondent agreed in his testimony that he was willing to release to the applicant 1½ acres. He faults the trial court for failing to take the above concession into account, adding that the concession was also contained in the respondent's pleadings and submissions.
4. The applicant states tht he has lived on the suit land for over 40 years, adding that he is ready to provide security if directed by the court. It is his case that he is in possession of the 1 ½ acres.
5. The respondent opposed the application through grounds of opposition dated 3/12/2025 and brief oral submissions tendered by **Ms. Mukami**. The case of the respondent is that there has been inordinate delay in bringing the application. The respondent points out that the application was brought 2 years after delivery of the impugned judgment. The respondent adds tht the appeal is devoid of merits, adding that the application is *resjudicata* because the applicant canvassed a similar application in the trial court. He urges the court to reject the application.
6. The court has considered the application, the grounds of opposition and the parties' oral submissions. The single issue to be determined in this ruling is whether the application meets the criteria for granting an order of stay of execution under **Order 42 rule 6 (2)** of the **Civil Procedure Rules**.
7. The relevant criteria has been legislated under **Order 42 rule 6 (2)** of the **Civil Procedure Rules** which provides as follows:

“No order for stay of execution shall be made under subrule (1) unless—

1. 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

2. 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.** On substantial loss, key evidence such as the applicant’s developments on the suit land was not tendered. The three exhibits which the applicant tendered were: (i) copy of the impugned ruling; (ii) copy of the letter dated 5/4/2024 from the OCS of Tunyai Police Station, which the applicant described as “the eviction warrant”; and (iii) the memorandum of appeal. No evidence was placed before this court to demonstrate the likely substantial loss.
- 9.** On unreasonable delay, the impugned judgment is said to have been rendered on 30/11/2022. The present plea for an order of stay of execution is dated 18/11/2025 and was filed on 20/11/2025. No evidence was tendered to explain the delay of about 3 years. If there subsisted a stay order issued by the trial court, that evidence has not been placed before this court. All I can say is that there has been an inordinate and unexplained delay in approaching the court for an order of stay of execution.

- 10.** Has the applicant satisfied the requirement for security? It was the duty of the applicant to give an offer supported by evidence. It would be irregular for the court to hand down orders on security without the benefit of evidence or proposal and counter-proposal by the parties involved.
- 11.** On whether the applicant has arguable grounds of appeal, the court is again handicapped. The applicant has not placed before this court the pleadings, evidence and submissions that were tendered in the trial court. Yet his key gravamen is that the trial court failed to take into account the fact that the respondent had, through his pleadings, evidence and submissions, agreed to cede to the applicant 1½ acres out of the suit land. Further, the applicant did not bother to place before this court, as evidence, the application and the responses that culminated in the impugned ruling. Consequently, the court cannot objectively tell if the applicant has arguable grounds of appeal.
- 12.** For the above reasons, the court finds that the applicant has failed to satisfy the criteria for granting an order of stay of execution under **Order 42 rule 6 (2)** of the **Civil Procedure Rules**.
- 13.** On costs, the general principle in Kenya's civil legal system is that costs follow the event. Consequently, the applicant shall bear costs of the application.

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

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. Peter Wakiaga for the Appellant/Applicant

Respondent - Absent

Court Assistant - Nelly

ORIGINAL