



**Uno & 3 others v Letshego Kenya Limited & 4 others (Environment and Land  
Case E299 of 2022) [2026] KEELC 507 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 507 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E299 OF 2022  
CG MBOGO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**MARY NJOKI UNO ..... 1<sup>ST</sup> PLAINTIFF  
SYMON NGAMAU MWANGI ..... 2<sup>ND</sup> PLAINTIFF  
PETER MWAURA MUTHURA ..... 3<sup>RD</sup> PLAINTIFF  
CECILIA GATHIGIA MACHARIA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**LETSHEGO KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT  
FRED KAMAU CHEGE ..... 2<sup>ND</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT  
COUNTY GOVERNMENT OF NAIROBI ..... 4<sup>TH</sup> DEFENDANT  
KENNETH NDUMBI NJOROGE ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 6<sup>th</sup> August, 2025 filed by the plaintiffs/ applicants, and it is expressed to be brought under Article 159 (2)(d) of *the Constitution*, Section 13 (7)(a) of the *Environment and Land Court Act*, Order 40 of the Civil Procedure Rules and Rule 3 (2) of the High Court (Practice and Procedure) Rules seeking the following orders:-
  1. Spent.
  2. Spent.



3. That pending the hearing and determination of this application inter partes, this honourable court be pleased to issue interim orders preserving the status quo and restraining eviction of the applicants from the suit land.
  4. That this honorable court be pleased to extend the stay of execution of the judgment and decree of this court granted on 23<sup>rd</sup> April, 2025 by a further sixty (60) days pending the hearing and determination of the application for stay at the court of appeal in Civil application no. E388 of 2025-Nairobi or until further orders of the court.
  5. That this honorable court be pleased to grant such orders as would serve to preserve the subject matter in civil application E388 of 2025.
2. The application is premised on the grounds on its face, and supported by the affidavit of the 2<sup>nd</sup> plaintiff/applicant sworn on even date. The 2<sup>nd</sup> plaintiff/applicant deposed that the judgment in this suit was delivered by this court on 23<sup>rd</sup> April, 2025 dismissing their case in favour of the 2<sup>nd</sup> defendant/respondent and proceeded to stay the execution of the judgment for a period of one hundred and twenty (120) days from the said date of delivery.
  3. The 2<sup>nd</sup> plaintiff/applicant deposed that being dissatisfied with the judgment, they filed a notice of appeal dated 7<sup>th</sup> May, 2025 an application for injunction at the Court of Appeal under Rule 5 (2)(b) of the Court of Appeal Rules, vide civil application no. E388 of 2025, followed by the main appeal and the record of appeal in civil appeal no. E517 of 2025.
  4. The 2<sup>nd</sup> plaintiff/applicant deposed that on the 10<sup>th</sup> July, 2025 the court gave directions on stay and granted stay of execution for 120 days which expires on the 22<sup>nd</sup> August, 2025 and further directing the 2<sup>nd</sup> defendant/respondent to evict them from the suit land which is a subject of both civil application E388 of 2025 and civil appeal E517 of 2025 both pending at the Court of Appeal. He deposed that if stay is not extended, they are likely to suffer substantial loss and irreparable harm through eviction, loss of possession and disruption of occupation which cannot be adequately compensated by damages.
  5. Further, that the subject matter of the appeal will be rendered nugatory as the 2<sup>nd</sup> defendant/respondent will proceed to evict the plaintiffs/applicants leading to execution of a judgment under appeal and rendering the appeal an academic exercise.
  6. The 2<sup>nd</sup> plaintiff/applicant deposed that they have acted in good faith, have diligently prosecuted the appeal, and are not guilty of delay or laches, as evidenced by the timely filing of the notice of appeal, the stay application under Rule 5(2) (b), and the record of appeal.
  7. The 2<sup>nd</sup> defendant/respondent filed his replying affidavit sworn on 3<sup>rd</sup> of November 2025. He deposed that stay should not be granted to the plaintiffs/applicants for the reason that no substantive appeal has been filed. Further, that the plaintiffs/applicants have only filed a miscellaneous civil application number E388/2025 at the Court of Appeal seeking orders of stay of execution of the judgment in this matter, which application does not constitute an appeal.
  8. Further, he deposed that there is a similar application before the Court of Appeal, which renders the instant application nugatory, and which occurrence renders this court functus officio in this matter, hence the application should be dismissed.
  9. The 2<sup>nd</sup> defendant/respondent deposed that the plaintiffs/applicants are in breach of the orders of this court, as the judgment required them to vacate the suit property in 120 days which they have not done. He deposed that the plaintiffs/applicants cannot seek redress in this court whilst their hands are



unclean. The 2<sup>nd</sup> defendant/respondent deposed that the plaintiffs/applicants have equally failed to demonstrate the substantial loss to be suffered.

10. By the time of writing this ruling, the respective parties had not filed their written submissions. Be that as it may, I have considered the application and the replying affidavit. The issue for determination is whether the court should grant the plaintiffs/applicants stay of execution of the judgment of this court delivered on the 23<sup>rd</sup> of April 2025 as well as the orders of status quo.
11. Stay of execution is provided for in twofold, first under Order 42 Rule 6 of the Civil Procedure Rules which provides that:-

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 the application being made, to consider such application and to make such order thereon as may to it seems 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.”
12. Stay is also provided for by the Court of Appeal Rules under Rule 5(2)(b), which states that:-

“Subject to subrule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may—

(b) in any civil proceedings where a notice of appeal has been lodged in accordance with rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.”
13. Since these are the Court of Appeal Rules, the court referred to in Rule 5(2) (b) above is the Court of Appeal. Therefore, contrary to the plaintiffs/applicants’ averment that they have adhered to the Court of Appeal rules, it is Order 42 of the Civil Procedure Rules that applies to order of stay of execution before this court.
14. The purpose of stay orders is to preserve the subject matter of the appeal so as not to render the appeal nugatory. In the famous case of *Butt vs. Rent Restriction Tribunal* [1979] eKLR, the Court of Appeal underscored the considerations for the grant or refuse a stay of execution pending appeal. The court stated that 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. Secondly, the general principle in granting or refusing a stay is, that 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. 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. Finally, the court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements.
15. In the present case, I note that indeed the plaintiffs/applicants filed a notice of appeal dated 7<sup>th</sup> May 2025, but they have not supplied the court with the said memorandum of appeal. Since the purpose of stay orders is to preserve the substratum pending appeal, the court notes that there is no appeal pending that calls for this court to preserve the substratum thereof.



16. Further, by his own admission, the 2<sup>nd</sup> plaintiff/applicant informed the court that they filed a similar application for stay of execution before the Court of Appeal. This offends the doctrine of res sub-judice and res judicata as provided for under Section 7 of the Civil Procedure Act which dictates that:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

17. While the court acknowledges that both this court as the court appealed from and the Court of Appeal have the requisite jurisdiction to hear and determine an application for stay of execution, the hierarchy given under Order 42 Rule 6 of the Civil Procedure Rules clearly dictates that one must file the stay application before the court appealed from and if refused, then they can then file the same application for stay before the court appealed to. However, the provision does not allow an applicant to reverse the hierarchical order nor file two concurrent applications for stay before both courts.

18. The court also observes that it is important to balance the rights of a successful litigant and a potentially successful appeal. In the case of Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR, Hancox JA was of the view that:-

“As I said I accept the proposition that if it is shown that execution or enforcement would render a proposed appeal nugatory, then a stay can properly be given. Parallel with that is the equally important proposition that a litigant, if successful, should not be deprived of the fruits of a judgment in his favour without just cause.”

19. From the above, I find that the plaintiffs/applicants are engaging in forum shopping with the intention of obtaining orders from this court. More so, they have not demonstrated any substantial loss that they will suffer if the orders are not granted. Thus, the court finds that the notice of motion dated 6<sup>th</sup> August 2025 is lacking in merit and the same is hereby dismissed with costs to the 2<sup>nd</sup> defendant/respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.**

**JUDGE**

**05/02/2026.**

In the presence of:

Ms. Benson Arunga - Court assistant

Ms. Naazi holding brief for Ms. Opondo for the 1<sup>st</sup> Defendant

Mr. Kimani for the 5<sup>th</sup> Defendant

No appearance for the Plaintiff/Applicant

