

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAJIADO

ELC APPEAL NO. E052 OF 2025

PAUL KARIUKI HARRY

.....APPLICANT

VERSUS

ANNE MUTHONI TUMUTI.....

RESPONDENT

(Being an appeal from the judgment of the Honorable Charles Ariba Kutwa (SPM) dated and delivered on the 21st August 2025 in the original MCELC NO. E049 OF 2022 at the Chief Magistrate Court Ngong).

R U L I N G

1. This ruling is in respect of the Notice of Motion dated 22nd September 2025 brought under Article 159 of the Constitution of Kenya, Section 1A & B 3 & 3A of the Civil Procedure Act, Order 42 Rule 6 (1) (2) (3), Order 51 Rule 1 of the Civil Procedure Rules 2010 all other enabling provisions of the law.
2. It seeks orders:-
 1. Spent.
 2. Spent.

3. That this Honorable Court be pleased to issue orders of stay of execution of the judgment and orders thereof of the Hon. Charles Ariba Kutwa SPM dated 21st August 2025 pending hearing and determination of the Appeal.
4. That this Honorable Court be pleased to issue any other orders it deems fit in the interest of justice.
5. That costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs a to g.
4. The application is supported by the affidavit of Paul Kariuki Harry sworn on the 22nd September 2025 and a further affidavit sworn on the 2nd December 2025.
5. The application is opposed. There is a Replying Affidavit sworn by Anne Muthoni Tumuti, the Respondent herein, on the 7th of October 2025.
6. On the 6th November 2025, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.

THE APPELLANT/ APPLICANT'S SUBMISSIONS

7. They are dated 2nd November 2025. They raise four (4) issues for determination: -

- 1. Whether the Applicant had demonstrated substantial loss.**

2. **Whether the application was brought without unreasonable delay.**
 3. **Whether the Applicant has offered security as required under Order 42 Rule 6.**
 4. **Whether the appeal is arguable and whether the interests of justice require preservation of the subject matter.**
8. Counsel submitted that substantial loss will occur if stay is not granted. The Appellant will be evicted from the land he has lived on since 1988. That the eviction will occasion him grave and irreversible harm. He has put forward the cases of ***Kenya Shell Ltd -vs- Benjamin Karuga (1982) KLR 407; RWW-vs- EKW (2019) eKLR***.
9. It is also submitted that the Application has been filed without undue delay as the judgment was delivered on the 21st August 2025.
10. It is further submitted that the Appellant is ready to comply with any security terms imposed by the court. He has put forward the case of ***Arun C. Sharma -vs- Ashana Raikundalia (2014) eKLR***.
11. Further that the Appeal is arguable and has a high likelihood of success. He has put forward the case of ***Stanley Kang'ethe- -vs- Tony Ketter (2013) eKLR***. He prays that the Application be allowed.

THE RESPONDENT'S SUBMISSIONS

12. They are dated 2nd December 2025. Counsel submitted that the court's power to grant stay of execution is discretionary and is exercised judiciously as per the conditions set out in Order 42 rule 6(2) of the Civil Procedure Rules.
13. It is also submitted that the Appellant/Applicant has not demonstrated substantial loss. That if he were to keep the building materials on the land, would harm and prejudice the Respondent who is entitled to enjoy her judgment. That the loss is quantifiable and can be compensated by an award of damages.
14. Counsel also submitted that the trial court found that the joint tenancy passed to the Respondent through survivorship.
15. Further, that a successful litigant should not be prevented from benefitting from her judgment. That granting stay would reward the Appellant's unlawful dumping of materials on the Respondent's land and delay her right to enjoy the fruits of her successful litigation.
16. It is also submitted that the appellant has failed to provide security for the due performance of the decree, a mandatory requirement for granting of stay of execution under Order 42 Rule 6 of the Civil Procedure Rules.
17. It is further submitted that the appeal is frivolous and intended to delay execution. She prays that the application be dismissed with costs.

ANALYSIS AND DETERMINATION

18. Order 42 Rule 6(2) of the Civil Procedure rules provides that:

“(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.”

19. In ***Peter Ondade t/a Spreawett Chemist -vs- Josephine Wangari Karanja (2006) eKLR L KIMARU J*** (as he then was) stated as follows:-

“The issue for determination by the court is whether the Applicant has established a case to enable the court to grant stay of execution sought. For the court to grant stay of execution it must be satisfied that substantial loss may result to the Applicant if stay is not granted. Further, the applicant must have filed the application for stay of execution without unreasonable delay. Finally, the Applicant must provide security as may ultimately be binding on him”

20. It is the Appellant's case that he has lived on the suit property since 1988. That the suit property is ancestral land and that if he is evicted he will have no home. He urges the court to find that he has demonstrated substantial loss. It is his case that the plaintiff holds the title in trust for him and the other siblings.

I am satisfied that the Appellant has demonstrated substantial loss.

21. It is not in dispute that the Application was brought without undue delay. Judgment was delivered on the 21st August 2025 and the Notice of Motion was filed on the 22nd September 2025. I find that the same was filed without undue delay.

22. It is submitted that the Appellant/Applicant is willing to comply with any terms imposed by the court as to security.

23. I find merit in this application and I grant the orders sought namely: -

(a) That a stay of execution of the judgment and order of Honorable Charles Ariba Kitwa (SPM) dated 21st August 2025 is hereby granted pending the hearing and determination of the Appeal herein.

(b) **On condition that: -**

(i) The appellant does deposit Kshs300,000 as security for cost in court within (45) forty-five days from the date of this ruling.

- (ii) The Appellant shall file and serve the Record of Appeal within sixty (60) days in order to move the court towards finalization of the Appeal within a reasonable time.

In default

- (a) The order of stay shall lapse automatically.
(b) That cost of this application abide the outcome of the appeal.

Ruling dated, signed and delivered virtually at Nakuru this 19th day of February 2026.

L KOMINGOI

JUDGE

In the presence of: -

Mr Ndolo for the Appellant

No appearance for the Respondent

Court Assistant: Nelima

