



**Ibrahim v Mutava & another (Land Case Appeal E020 of 2025)
[2026] KEELC 583 (KLR) (10 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
LAND CASE APPEAL E020 OF 2025
AY KOROSS, J
FEBRUARY 10, 2026**

BETWEEN

HALIMA IBRAHIM APPELLANT

AND

JOSEPH MULINGE MUTAVA 1ST RESPONDENT

MLOLONGO DREAM LAND SETTLEMENT SCHEME 2ND RESPONDENT

RULING

1. Since the appellant was dissatisfied with the judgment given by the lower court on 27/06/2024 in the Chief Magistrate's Court, Mavoko, MCELC No. E830 of 2021, and was granted leave to appeal out of time, she filed a notice of motion together with a memorandum of appeal. This unopposed motion, which is the focus of this ruling, is dated 9/04/2025 and is made in accordance with the provisions of Sections 1A, 1B, and 3A of Chapter 21 of the Laws of Kenya, and Orders 50, Rule 6, and 51, Rule 1, of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. In this motion, the appellant seeks the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That this honourable court be pleased to stay execution of the decree in Mavoko MCELC No. E830 of 2021 and all proceedings in Machakos ELCMISC E008 OF 2025 (Joseph Mulinge Mutava vs Halima Ibrahim and Mlolongo Dream Land Settlement Scheme), including the eviction proceedings scheduled for hearing on 8/05/2025, pending the hearing and determination of the appeal.
 - d. Spent.



- e. That this honourable court do make any such further and/or other orders and issue any other relief it may deem just to grant in the interest of justice.
 - f. That the costs of this motion be in the cause.
2. The motion is supported by the grounds contained therein as well as the affidavit sworn on the instant date by the appellant. In summary, she states that the 1st respondent has initiated eviction proceedings against her in Machakos ELCMISC E008 OF 2025. Unless a stay pending appeal is granted, she risks eviction, rendering her appeal nugatory and causing irreparable loss despite her arguable case.
 3. She also seeks a stay of all proceedings to prevent prejudice from parallel actions. She is willing to accept the conditions the court sets for stay orders. If orders are not granted, her appeal will be rendered nugatory, and she will suffer substantial loss. When this matter came before this court on 2/10/2025, Mr. Lang'at urged this court to allow this motion. As a result, this court has carefully examined the motion, its grounds, and affidavit, and it arises that the singular issue for determination is whether the appellant has met the legal threshold to warrant a stay of execution pending appeal.
 4. Concerning the relevant law, and though not posited on the face of the motion, Order 42 Rule 6 of the Civil Procedure Rules empowers this court to entertain the instant motion. The long-standing principles contained in this provision are that an applicant in this case, the appellant, must demonstrate that the motion is brought without undue delay, satisfy the court that substantial loss may result to them unless a stay of execution is granted, and provide security as ordered by the court for the proper performance of any decree or order that may ultimately be binding upon them.
 5. Furthermore, since this is the court to which an appeal has been lodged, the other principles it must consider are that the applicant has demonstrated that the appeal or intended appeal is arguable; and that, unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. When entertaining motions such as this, this court exercises judicious discretion and is guided by the aforementioned tests. When determining whether the appellant has met the legal threshold, this court will sequentially examine the tests and, in doing so, consider the prevailing jurisprudence that aligns with them.
 6. The first test concerns delay. In this case, it is clear that the appellant filed their motion promptly, as leave to appeal out of time was granted on 25/03/2025, and this motion was filed on 9/04/2025, a few days after the ruling granting her leave to appeal out of time.
 7. Regarding the second and third tests of substantial loss and the appeal being rendered nugatory, the frequently referenced Ugandan decision of Tropical Commodities Suppliers Ltd and Others v. International Credit Bank Limited (in liquidation) (2004) E.A. LR 331, in paragraph 16 and subsequent sections, delineates the criteria that constitute substantial loss, stating:

“...Hence, the question needs to be asked as to what in law constitutes “substantial loss”. In my view, substantial loss need not be determined by a mathematical formula whose computation yields any particular amount. Indeed, Jowitt’s Dictionary of English Law (2nd Edn.) Vol. 2, p.1713, carefully defines the analogous concept of “substantial damages” as: “damages which represent actual loss, whether great or small, as opposed to nominal damages. “[emphasis added]

17. In similar vein, Black’s Law Dictionary (6th Edn.) at p.1428, defines the word “substantial” as, inter alia:



“of real worth and importance, not seeming or imaginary or illusive - Seglem v Skelly Oil Co., 145 Kan. 216 P.2d 553, 554. Something worthwhile as distinguished from something without value or merely nominal — In Re Krause’s Estate, 173 Wash. 1, 21 P. 2d 268.”

The conclusion is inescapable. Substantial loss does not represent any particular amount or size. It cannot be quantified by any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value, as distinguished from a loss without value or a loss that is merely nominal.”

8. Further, on appeal being rendered nugatory, the decision of Stanley Kangethe Kinyanjui V Tony Ketter & 5 others [2013] KECA 378 (KLR) weighed in on this test and stated as follows:-

“x) Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.”

9. The appellant asserts that she would incur significant loss should the imminent eviction proceed, and if the stay of execution is not granted. Indeed, eviction proceedings have been initiated against her before this court, and her claims regarding potential loss have not been contested. This court is convinced that this criterion has been satisfied. Furthermore, it finds that the appeal could also be rendered nugatory.

10. Turning to the criterion of security, the appellant merely asserts that she was willing to pay security. Having considered this test, this court finds that the mere fact that the appellant has not presented a particular sum does not divest this court of jurisdiction to exercise its discretion in considering the amount of security that the appellant shall tender. Having considered the circumstances of this case, this court hereby exercises its discretion and finds the sum of kshs. 300,000/= is sufficient for security for costs.

11. Regarding the final criterion of the arguability of the appeal, as affirmed in the decision of APA Homes (K) Limited v Omar & another [2025] KECA 1035 (KLR), the principle therein is that an arguable appeal is not necessarily one that must succeed, but rather one that warrants consideration by the court. After reviewing the grounds of appeal, which challenge the impeachment of title, this court concludes that the appellant has presented an appeal that is arguable and not frivolous. About the stay of proceedings in ELCMISC E008 OF 2025, this court finds that these orders are not available to the appellant in these proceedings.

12. The upshot is that this court finds merit in the notice of motion dated 9/04/2025 and allows it. Costs shall abide by the outcome of the appeal. In the end, this court hereby issues the following disposal orders: -

- a. That stay of the execution of the judgment rendered on 27/06/2024 in Mavoko MCELC No. E830 of 2021 is granted, subject to the appellant depositing Kshs. 300,000/= in an interest-earning joint account in the names of the advocates for the parties on record within 45 days from the date hereof, in default of which the respondents shall be at liberty to execute the decree of the trial court.
- b. That the appellant shall file and serve the record of appeal within 45 days from the date hereof.
- c. That the appeal is hereby admitted and the lower court record is to be called for.
- d. That costs shall abide by the outcome of the appeal.



e. That a mention date shall be issued before the deputy registrar.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 10TH FEBRUARY, 2026.

HON. A. Y. KOROSS

JUDGE

10. 02.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Langat holding brief for Miss Jeruto for Applicant/ Appellant

Mr. Munyambu for Respondent

