

2. The applicant deposes that since buying the land in August **1997**, he has been cultivating the same. The applicant says that the court has given him **90** days to hand over vacant possession, which will expire on **16/12/2025**. The applicant deposes that he has since been granted leave to file a notice of appeal out of time, which he has done as per the annexures marked **CBWO-(3), (4), (5), and (6)**.
3. Unless a stay is granted, the applicant says that he will lose possession of the land before his appeal is heard and determined. The applicant further says that he will lose the crops and developments on the land, he shall be rendered homeless with nowhere else to go with his family, suffer untold hardship, hence loss and damage which he may not recover even if successful in the appeal, which has high chances of success.
4. The applicant states that he is willing to furnish security for due performance of the decree in such sum, form, and amount as the court may grant.
5. The applicant deposes that the land will remain intact pending the appeal, regardless of who occupies it, unlike if he succeeds and the restoration to possession may prove impossible or extremely difficult after he is evicted; otherwise, he has filed the application without inordinate delay,

immediately after the Court of Appeal ruling granting him leave.

6. The application is opposed by Isaac Macharia through a replying affidavit sworn on **27/1/2026**. He says that the applicant voluntarily demolished his structures, vacated the suit land, and handed over vacant possession to him in full compliance with the judgment in **October 2025**.
7. The respondents depose that upon handover, they took full possession of the suit land and have started making preparations for the **2026** planting season, as per the annexed photographs together with a certificate under **Section 106B** of the Evidence Act annexed as **IS-(1)**.
8. The respondents depose that the judgment of the court has been fully executed and implemented, and therefore, there is nothing capable of being stayed. The respondents depose that the applicant has failed to meet the threshold of stay, his application is moot, misconceived, and an abuse of the court process, brought with the sole intention of delaying the enjoyment of the fruits of a lawful judgment.
9. The respondents rely on written submissions dated **27/1/2026**. It is the respondent's submissions that a stay of execution cannot issue in vain and cannot

reverse a completed act. Further, it is submitted that the three conditions of stay must be satisfied conjunctively.

10. In this case, since vacant possession has already been voluntarily handed over, there is nothing to stay or restrain after the judgment has been perfected and completed in **October 2025**. The respondents submit that no substantial loss has been substantiated or demonstrated, and in this case, since there has been voluntary handing over of vacant possession, there is no real, actual, or demonstrable loss, save for speculative and academic ones.

11. The respondents submit that after handing over vacant possession, the applicant cannot turn around and seek a stay to undo compliance through the back door. The respondents submit that the application was filed after an inordinate and unexplained delay on **10/12/2025**, when the handing over took place in **October 2025**.

12. Further, the respondents submit that security for due performance of the decree has not been offered or proposed in any forum, yet it is a jurisdictional precondition to grant a stay. The respondents submit that the obligation is on the applicant and therefore, the court cannot speculate or impose

security *suo moto*, where none has been offered, making the application fatal.

13. The respondents submit that the application is an abuse of the court process, following full voluntary execution of the judgment, and therefore, for the applicant to resort to reverse or suspend its effect, such conduct offends the principles of finality to litigation, judicial economy, and the orderly administration of justice.

14. To stay or not stay an execution of a decree by the court to whose order or decree is appealed against in another higher court is a discretionary power, to be exercised on sound principles.

15. In ***Dodhia & Another -vs- Wafula [2-25] KECA 2172 [KLR] (10th December 2025) (Judgment)***, the court held that nugatory means whether or not what is sought to be stayed, if allowed to happen, is reversible, or if it is irreversible, whether or not damages will be reasonably compensated to the aggrieved party. The court said that in considering whether or not to stay execution, the discretion is exercised by looking at the bigger picture to preserve the ends of justice.

16. An applicant seeking a stay must file an application without inordinate delay. The law has not set a

minimum or maximum delay. It all depends on the circumstances of each case; where there is a delay, the measures for the same must be reasonable. In **John Amalemba Kiroli & 2 others -vs- Joseph Chibeiya Makamu [2021] KECA 561 (KLR)**, the court cited **Andrew Kiplagat Chemaringo -vs- Paul Kipkorir Kibet [2018] eKLR**, that a plausible and satisfactory explanation for delay is key, to unlock the court's flow of discretion, and that there must be clear and valid reasons upon which discretion can be favourably exercised.

17. Stay of execution simply means that the court will pause the enforcement of the judgment. A party must therefore move to court without unreasonable delay. The judgment of the court was delivered on **17/9/2025**, and a widow of **90** days was given to the applicant to handover vacant possession. The application was filed in less than **6** days before the expiry of the period of **90** days. The delay of waiting until the last minute to seek to stay the execution has not been explained at all. See **Edith Gichugu Koine -vs- Stephen Njagi Thoithi [2014] eKLR**.

18. In **Halai & another -vs- Thornton & Turpin (1963) Ltd [1990] eKLR**, the court said that the discretion to stay is fettered by showing sufficient cause, satisfactory substantial loss, furnishing of

security, and that the application must be made without unreasonable delay.

19. In *Jason Ngumba Kagu & 2 others -vs Intra Africa Assurance Co. Limited [2014] KEHC 2183 (KLR)*, the court held that the probability that a substantial loss will occur if an order of stay of execution is not granted is the cornerstone of the stay. The court said that courts balance between the right of the respondent to the fruits of his judgment and the right of the applicant, on the prospect of his appeal.

20. In *Samvir Trustee Limited -vs- Guardian Bank Limited [2007] eKLR*, the court said that the yardstick is for the court to balance the scales of justice, by ensuring that an appeal is not rendered nugatory, while at the same time, ensuring that a successful party is not impeded from enjoying the fruits of his judgment. Further, the court held that an applicant must not make mere assertions of substantial loss but must provide empirical or documentary evidence to support such a contention. See also *Kenya Shell Ltd -vs- Kibiru [1986] KLR 410*.

21. In *Tropical Commodities Suppliers Ltd & Others -vs- International Credit Bank Ltd (in liquidation) (2004) 2 E.A. 331*, the court said

that substantial loss does not represent any particular mathematical formula, but is a qualitative concept representing any loss, greater or small, that is of real worth or value.

22. In **Tabro Transporters Ltd -vs- Absalom Dova Lumbasi [2015] eKLR**, the court was of the view that it should administer the justice that the case deserves, in recognition that both parties have rights. Further in **James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2012] eKLR**, the court held that an appellant must show substantial loss by establishing factors 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.

23. In **National Industrial Credit Bank Limited -vs- Aquinas Francis Wasike & another [2015] KECA 337 (KLR)**, the court said that the legal duty is on the applicant to prove the allegations of the appeal being rendered nugatory.

24. As to security, it is the applicant to offer, mention, and indicate the nature, particulars, and manner of the sufficient security for the due performance of the decree. See **Arun C. Sharma -vs- Ashana Raikundalia T/A. Raikundalia & Co. Advocates & 4 others [2014] eKLR**.

- 25.** In *Dobhia -vs- Wafula* (*supra*), the court observed that the ends of justice include letting a deservedly winning party enjoy the fruits of their judgment. In this application, there is uncontroverted evidence that the decree has already been implemented and perfected with the voluntary handover of vacant possession, two months before this application was filed.
- 26.** The applicant has to see it fit to controvert those assertions by the respondent that there is nothing for the court to stay, other than a back-door attempt through this application to undo what has already occurred. Courts do not act in vain.
- 27.** A court cannot stay what can no longer be stayed. The applicant has said that he is in occupation of the suit premises. If he had already handed over vacant possession voluntarily, it means that what he is now swearing on oath after the event is not the true circumstances on the ground.
- 28.** A party coming to court for a stay must be candid and make a full disclosure of what substantial loss he is likely to suffer. There is no empirical data or documentary evidence to substantiate the nature of the developments that the applicant has on the suit land, which would amount to a substantial loss. Without demonstrating the same, the court finds no

basis to undo what has already taken place with the concurrence of the applicant.

29. Regarding security, it is not for the court to direct the applicant. It is the applicant who should say what he is offering commensurate with the decree. Nothing has been offered by way of security documents or otherwise.

30. The upshot is that I find the application lacking merit. It is dismissed with costs.

31. Orders accordingly.


Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 18th day of February 2026.

In the presence of:

Court Assistant - Dennis

Teti for the respondents present

Namude applicant absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**