



**Muturi v Ndumbi & 3 others (Environment and Land Appeal E001 of 2025)
[2026] KEELC 523 (KLR) (Environment and Land) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 523 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E001 OF 2025
MC OUNDO, J
FEBRUARY 5, 2026**

BETWEEN

LUCY WANJIRU MUTURI APPELLANT

AND

MARTIN GATHOGO NDUMBI 1ST RESPONDENT

GABRIEL MWENDIA KAMAU 2ND RESPONDENT

**NAKURU TEACHERS HOUSING CO-OPERATIVE SOCIETY 3RD
RESPONDENT**

**NANCIE WAKESHO, JOYCE KIBE & GRACE MAINA (SUING AS OFFICIALS
OF UNIQUE SISTERS WOMEN GROUP) 4TH RESPONDENT**

RULING

1. In its ruling delivered on 23rd October 2025, the court had found the 1st and 2nd Defendants herein guilty of contempt of the court orders of the 10th March 2025, wherein their Mitigation and sentencing had been slated for the 4th November 2025. On the said date, however, the court was informed of an application that had been filed in the Court of Appeal seeking to stay and/or arrest the sentencing. That an order of stay had been issued but was pending signature. Subsequently, the mitigation and sentencing were stayed pending communication from the Court of Appeal in Nakuru, ELCLA No. E110/2025.
2. On 11th November 2025, when the matter came up for mention to confirm the status of the Application before the Court of Appeal, this court had been informed that whereas the appeal before the Court of Appeal had not been withdrawn, the application for stay had been withdrawn because the Judges of the Court of Appeal had opined that the same was premature.



3. Subsequently, the Appellant/Applicant filed a Notice of Motion Application dated 7th November 2025 brought under the provisions of Order 42 Rule 6 & Order 22 Rule 22 of the Civil Procedure Rules and Section 63E of the *Civil Procedure Act* wherein the 1st and 2nd Applicants/Respondents sought for stay of sentencing in the Ruling of 23rd October, 2025 pending the hearing and determination of their intended Appeal.
4. The said Application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Martin Gathogo Ndumbi, the 1st Respondent/Applicant herein who deponed that pursuant to the ruling of 23rd October 2025 where they had been found in contempt of court orders, they had since filed a Notice of Appeal to the court of appeal against the said Ruling.
5. they argue that the Order issued on the 10th March, 2025, had been served upon their advocates on the 27th March, 2025, at 4:47 pm whereas the orders, that had been issued on the 11th March, 2025, had already been executed on the 27th March, 2025 at 11:00 am before their Advocates had received the status quo order.
6. That subsequently, their Appeal had high chances of success since by the time they evicted the Applicant/Respondent, they had not received any court order barring them from execution, hence there been no contempt. If the sentencing were executed, they stood to suffer irreparable loss and damages, wherein their intended Appeal would be rendered nugatory. They sought for their application to be allowed.
7. In response and opposition to the 1st and 2nd Respondent's Application, the Appellant, vide her Replying Affidavit dated 13th November 2025, deponed that the instant application is an abuse of court process and a gross misrepresentation of facts, hence it was worth a dismissal with costs.
8. That pursuant to the ex-parte interim orders having been granted on 10th March 2025 pursuant to her application dated 6th March 2025, which orders had directed parties to maintain status quo on the suit land, on 11th March 2025, her Advocates on record served M/s Naomi Muriithi & Co. Advocates, Counsel for the 1st and 2nd Applicants with both the application dated 6th March 2025 and court directions of 10th March 2025 through her email.
9. That subsequently, the instant application is premature and counter to the provision of Order 42 Rule 6 since no sentencing had taken place and the court was yet to issue its final verdict herein.
10. That pursuant to service, the Applicants filed a preliminary objection dated 11th March 2025, objecting to the Respondent's application dated 6th March 2025, which was domiciled in the court filing system. That further despite service, and Counsel having access to the domicile of the court order in the court filing system (CTS) as early as 11th March 2025, they had contemptuously descended on her property and demolished the same, which caused immense loss, adding up to over Ksh. 24,075,000/=
11. That on 27th March 2025, when she learned of the demolition taking place in the suit land being Gilgil/Gilgil Block 1/554 (Kikopey), she and her lawyers tried to contact the OCS Gilgil Police Station to seek help in stopping the demolitions to no avail.
12. That her lawyers, on instructions, wrote a protest letter dated 27th March 2025 to the Applicants' lawyer M/s Naomi Mureithi & Co. Advocates, who did not respond since they knew of the conspiracy to frustrate and defeat the court orders of 10th March 2025 by altering the status quo.
13. That the Applicants herein were peddling perjury and untruth by stating that they had been served with court orders of 10th March 2025 on 27th March 2025, whereas it had been a protest note to the



OCS Gilgil Police Station that had been served on 27th March 2025, and a copy sent by email to the Appellants' Counsel.

14. That she had lodged the application of 28th March 2025 for contempt of the court order to seek a remedy for illegal demolition and destruction of her property by the 1st and 2nd Applicants, noting that they had been served through their counsel with the court orders of 10th March 2025 on the 11th March 2025.
15. That indeed, in their entire submission, the applicants never denied the existence of an appeal in the superior court nor did they deny demolishing her assets but had instead only pleaded lack of service of orders of 10th March 2025 whereas it was clear that they had been served on 11th March 2025 through an email which had prompted their filing of Preliminary Objection dated 11th March 2025 to the Respondent's application dated 3rd March 2025. She thus deponed that the instant Application is speculative, premature and misleading since there is no disclosed basis of prejudice that the Applicant stood to suffer.
16. That in any case, the 1st and 2nd Applicants herein have no single appealable ground. The Honourable court, in reaching its decision to convict, had critically assessed the circumstances of service of the court order and the implications of Applicants filing the preliminary objection. That indeed, the Honourable court in its ruling dated 23rd October 2025 had fairly and justly analyzed the facts and circumstances of service of the court order of 10th March 2025 and the knowledge of the existence of the same in the case tracking system as from 10th March 2025 hence the conviction of 1st and 2nd Respondents/Applicants was fair and just wherein sentencing is necessary.
17. That it was thus premature for the Applicants/Appellants to try to gag the court with orders of stay before the sentence had been pronounced, which then amounts to an abuse of the court system.
18. That since the Applicant's application for stay in the court of appeal had been withdrawn, there was no appeal pending. That in fact, it was a mutual understanding between the parties in the court of appeal that the 1st and 2nd Applicants herein were to submit themselves to the jurisdiction of the court for sentencing and thereafter be at liberty to appeal.
19. That the Applicants have no tangible appeal, have not shown what prejudice they would suffer if the application is not granted and, in any event, there is no loss that they would suffer since sentencing was a procedural process of law. That the application herein was premature, bad in faith and law and unprocedural.
20. The Application was disposed of by way of written submissions.

1st and 2nd Defendants/Applicants' Submissions

21. Through their submissions dated the 10th December 2025, the 1st and 2nd Applicants to the Application argue that the court possesses the inherent power and discretion to grant a stay of proceedings. They contend that their application is properly before the court to ensure that the ends of justice are met. They cited the provisions of Order 42 Rule 6 & Order 22 Rule 22 of the Civil Procedure Rules (Stay of execution pending appeal) as well as the provisions of Section 63E of the [Civil Procedure Act](#) in support of their Application.
22. They further relied on numerous decisions, including: African Centre for Rights and Governance (ACRAG) & 3 Others vs Naivasha Municipal Council [2018] eKLR, Justus Kariuki Mate & Another vs Martin Nyaga Wambora & Another [2014] eKLR and National Bank of Kenya & Another vs Geoffrey Wahome Muotia, Court of Appeal at Nairobi, Civil Application No. NAI 283 of 2015 (UR



- 241/2015), (2016) eKLR, amongst others, to submit that they were properly before the court with their plea to stay their mitigation and sentencing.
23. That they had acted without delay, wherein a Notice of Appeal had been filed immediately following the ruling of October 23, 2025. They conceded to having initially moved to the Court of Appeal but were directed to exhaust remedies in the trial court first. The current application was filed on 7th November 2025, which they argue was well within a reasonable timeframe, being less than 15 days after the conviction.
 24. They maintained that their intended appeal was not frivolous and raised a substantial legal question, to wit, that while their advocate may have been aware of the status quo order, there was no evidence that they were personally aware of it before the eviction was executed.
 25. That they were intent on seeking a determination from the Court of Appeal as to whether service of an ex-parte order on an advocate constituted sufficient personal knowledge to sustain a criminal-standard conviction for contempt.
 26. The core of their argument was that failing to grant a stay would make a
 27. successful appeal meaningless wherein if the court were to proceed to sentence them, they could be jailed or fined, such that if their appeal later succeeded, they could not "undo" the time spent in prison or the penalisation already suffered. They also argued that the Plaintiff would suffer no harm if sentencing was delayed because, were the appeal to fail, the court could then sentence them. Otherwise, they would suffer extreme harm if the stay was denied. They relied on the decisions in the cases of *National Bank of Kenya & Another vs Geoffrey Wahome Muotia* [2016] eKLR and *Butt v Rent Restriction Tribunal* [1979] KLR, where the court had cited the decision of Cotton J in the case of *Wilson vs Church* (No. 2)12 CH D (1899)454 to buttress their submissions.
 28. In conclusion, they submitted that they had a right to appeal and had satisfied the dual test for a stay and therefore sought the court to grant them prayers 4 and 5 of their Notice of Motion dated 7th November, 2025.

Plaintiff/Respondents Submissions.

29. In response, the Plaintiff/Respondent, through her submissions dated the 17th December 2025, vehemently opposed the stay of sentencing for the reason that the application was a procedural shortcut designed to help convicted contemnors evade the authority of the court.
30. The Plaintiff argued that once a conviction for contempt is entered, the court had a constitutional and judicial duty to proceed to sentencing. Delaying this stage would undermine the rule of law and the court's dignity.
31. The Plaintiff then reiterated that the Defendants had wilfully disobeyed orders of the court of 10th March 2024, thereby evicting her from the suit land and in the process causing a loss/damage of Ksh. 25,075,000/=, a fact the Defendants had notably not denied. They relied on the provisions of Article 165 (3) of *the Constitution* and Section 63(c) of the *Civil Procedure Act* as well as the decisions in the cases of *Teachers Service Commission v. KNUT & 2 Others* [2013] eKLR, *Econet Wireless Kenya Ltd v. Minister for Information & Communication* [2005]eKLR and *Republic v. Ahamad Abolfathi Mohammed & Another* [2019] eKLR among others to support their submissions.
32. She contended that the Application was premature and unprocedural, wherein the Defendants were putting the cart before the horse. That the proper procedure was a conviction, then mitigation,



Sentencing followed by a stay Application. That seeking a stay before sentencing was legally impossible because there was no final sentence to stay yet.

33. Citing *Shimmers Plaza Limited v. National Bank of Kenya* [2015] eKLR, the Plaintiff argued that a party currently in contempt cannot seek the court's discretion while continuing to defy the court's authority.
34. The Plaintiff then proceeded to provide a critical update on the Nakuru Court of Appeal proceedings in Civil Appeal No. E110 of 2025, where the court had expressly directed the Defendants to submit themselves to the trial court for sentencing. The current application was therefore not just premature, but a direct violation of the Court of Appeal's guidance and an affront to the judicial hierarchy.
35. The Plaintiff argued that the 1st and 2nd Defendants had not exhausted their remedies, that during sentencing, they could mitigate, offer to purge the contempt and provide compensation to the Plaintiff. That only after a sentence was handed down that they could legally apply for a stay under Order 42 Rule 6 of the Civil Procedure Rules.
36. In conclusion, the Plaintiff characterised the application as an attempt to gag the court and render contempt jurisdiction hollow. She sought that the application be dismissed with costs and for the court to proceed immediately to sentence the 1st and 2nd Applicants so as to discourage impunity.

Determination.

37. I have considered the 1st and 2nd Applicant's Application, the Plaintiff's response, the cited authorities and applicable law.
38. The Application before me is brought under the provisions of Order 42 Rule 6 (1) of the Civil Procedure Rules, which provide as follows;

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 Application being made, to consider such Application and to make such order thereon as may to it seem 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.

(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 Applicants 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 Applicants”

39. What is before me is an application filed by the Applicants seeking to stay their Mitigation and sentencing pursuant to the court's ruling of 23rd October 2025, where they had been found guilty of contempt of the court's orders of the 10th March 2025, pending an intended Appeal. They argued that the impugned court order was only served on their advocates at 4:47 pm on 27th March 2025 after the demolition and eviction had already occurred at 11:00 am that same day.



40. They argue that their intended appeal has a high chance of success because there was no wilful contempt if they were not served. They also contend that if sentencing proceeds, their right to appeal would be rendered nugatory.
41. The Plaintiff/Respondent's position in opposition to the application is that the Applicant's counsel was served with the court orders via email on 11th March 2025. The Plaintiff then points out that the Applicants filed their Preliminary Objection on 11th March 2025, evidence that they were aware of the application and the orders weeks before the demolition.
42. The Plaintiff then proceeded to argue that the application for stay was premature because the court had not yet handed down a sentence. That the Applicants had previously withdrawn a similar application in the Court of Appeal after being informed that it was premature. She highlighted the fact that it was pursuant to the Applicants' act of contempt that she was evicted and, in the process, incurred damages to the tune of Ksh. 24,075,000/=.
43. I find one issue arising for determination, to wit: whether the application is merited.
44. The purpose of a stay of execution is to preserve the substratum of the case, as was held in the case of Consolidated Marine. vs. Nampijja & Another, Civil App.No.93 of 1989 (Nairobi), where the Court held that: -
- “The purpose of the Application for stay of execution pending Appeal is to preserve the subject matter in dispute so that the right of the Appellant who is exercising his undoubted right of Appeal is safeguarded and the Appeal if successful, is not rendered nugatory”.
45. It is trite that for the Applicants to succeed in an application for stay of execution, the onus was on them to satisfy the three conditions as set down under Order 42 Rule 6(2) of the Civil Procedure Rules, which conditions include:
- i. The Court is satisfied that substantial loss may result to the Applicants unless a stay of execution is ordered;
 - ii. The Application is brought without undue delay and
 - iii. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on them has been given by the Applicants.
46. Execution in a matter of contempt proceedings will only come to an end after the sentence has been handed down to the contemnors. To the extent that when the Court has not punished the contemnor, there is really nothing specific that the Court can stay with respect to execution. The consequences which are the orders the Court may make as the sentence at this stage are not known and therefore execution cannot ensue. (See Stephen Mbugua Gituthi & 2 others (All Applicants suing on their own behalf and on behalf of 57 other Applicants) v National Land Commission & another [2021] eKLR)
47. The Applicants contend that if the stay orders are not granted, they stand to suffer substantial loss in that their liberty, fundamental freedom, will be at stake.
48. It is trite law that in an application seeking a stay of execution, the Applicants need not only state that they would suffer substantial loss if the orders sought were not granted but must go further to show the kind of substantial loss they would suffer if the Respondent executed the Decree (see Charles Wahome Gethi vs. Angela Wairimu Gethi [2008] eKLR). In the present case, the Court is yet to pass down its sentence, and therefore, there is really nothing specific that the Court can stay with respect to execution as the court has not yet punished the Applicants/contemnors. Punishment is the final stage in these



proceedings, and therefore, since at this stage it is not known what orders the court would make, the Applicants cannot plead prejudice and/or substantial loss by a sentence whose nature and severity they know nothing about.

49. Indeed, the Court of Appeal in *Co-operative Bank of Kenya Limited vs Banking Insurance & Finance Union (Kenya)* [2015] eKLR held as follows:

“An order for stay of execution (pending appeal) is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a judgment. The delay of performance presupposes the existence of a situation to stay – called a positive order – either an order that has not been complied with or has partly been complied with.”

50. The Applicants not having been sentenced, it is trite therefore that there was no positive order to stay.

51. In *Wendano Matuu Co Ltd & 2 others vs Joshua Kimeu Kioko & 6 others* [2020] eKLR, the Court had held that;

“...This Court has already found the Defendants guilty of contempt of Court and has directed them to appear before it for purposes of mitigation and sentencing and hence it is prudent for the Applicants to approach the appellate Court for orders of stay. Further, the contempt proceedings are at the tail end and which have taken a criminal dimension and that this Court cannot abdicate from its responsibility to punish an offender who has been found guilty by deferring the sentence now due. It is only a higher Court that is seized with jurisdiction to grant orders of stay of sentence...”

52. The Applicants' claim for substantial loss is therefore unfounded as the Court is yet to pass sentence, and as such, the Application is premature. This said and done, I need not consider the other two conditions as set under Order 42 Rule 6(2) of the Civil Procedure Rules. It is trite that an Appeal to the Court of Appeal can only lie upon sentencing. The Applicants will still have a right of appeal against the order on sentence, and therefore, I see no prejudice that will be visited upon them.

53. Now, looking on the flip side of the coin and more specifically on whether the court has jurisdiction to entertain the Applicants' application. The Applicants have submitted that they had an arguable appeal which would be rendered nugatory were the orders they seek not granted. However, it is not contested that after the Applicants tried to gag the court by rushing prematurely to the Court of Appeal in an attempt to secure orders of stay before the sentence had been pronounced, they subsequently withdrew the Application and, in essence, therefore, as the matter stands, there is no appeal existing (See “LWN 6”)

54. The Supreme Court in *James Mbatia Thuo & Ephantus Mwangi v Kenya Railways Corporation & Attorney General of Kenya* [2018] eKLR held as follows:

“In the absence of an appeal, or an application for extension of time, accompanied by a memorandum of appeal, the rejected application had no legal basis. We therefore see no reason to interfere with, or upset the decision by the Honorable Registrar rejecting the application.”



55. Further in the case of *University of Eldoret & Another vs Hosea Sitienei & 3 Others* [2020] eKLR, the Supreme Court had also held as follows:

“In the absence of a subsisting appeal as we have found above, the prayers for stay in both applications are superfluous. The principles for grant of orders of stay were enunciated in *Board of Governors, Moi High School Kabarak & Another* case (supra) the principle objective of which being to preserve the subject matter of an appeal., the applicant must satisfy the Court that the intended appeal is arguable and not frivolous, and that unless the stay order sought is granted, the appeal or intended appeal would be rendered nugatory.”

56. There being no subsisting appeal and in line with my earlier findings herein above, I find that the Application lacks merit and the same is hereby dismissed with costs to the Plaintiff/Respondent.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 5TH DAY OF FEBRUARY 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT – JUDGE.

