



**Nzumbi v Swazuri & another (Environment and Land Appeal
E012 of 2025) [2026] KEELC 620 (KLR) (4 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 620 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND APPEAL E012 OF 2025
LL NAIKUNI, J
FEBRUARY 4, 2026**

BETWEEN

KAVUNZA NZUMBI APPLICANT

AND

PROF MOHAMED ABDALLAH SWAZURI 1ST RESPONDENT

KENYA POWER AND LIGHTING COMPANY 2ND RESPONDENT

RULING

I. Introduction

1. Before the Honourable Court for its determination is the Notice of Motion application dated 4th September 2025. It was brought by Kavunza Nzumbi, the Appellant/Applicant herein pursuant to the provisions of Sections 1A,1B and 3A of the *Civil Procedure Act*, Cap. 21, Order 42 Rule 6 of the Civil Procedure Rules, 2010 and any other applicable provisions of the law.
2. Upon service, the application was opposed vide a Replying Affidavit sworn by, Prof. Mohamed Abdallah Swazuri, the 1st Respondent on 19th September 2025, the 1st Respondent further filed a supplementary affidavit. The Honourable Court shall be highlighting these pleadings later in this Ruling.

II. The case by the Appellant/Applicant.

3. The Appellant/Applicant sought to be granted the following orders before court:-
 - a. Spent.
 - b. That there be a stay of execution and/or further proceedings pursuant to the order issued in MCELC No E051 of 2025 Prof. Mohamed Abdallah Swazuri - Versus - Kavunza Nzumbi and



Kenya Power and Lighting Company at Kwale on 1st September 2025 pending the hearing and determination of this application and/or the intended appeal

- c. That cost of this application be provided for.
4. The application was premised upon grounds, testimonial facts and the averments made out under the 15 Paragraphed supporting affidavit sworn by Kavunza Nzumbi the Appellant/Applicant together with seven (7) annexures marked as “KN – 1 to 7” annexed thereto. The Applicant averred therein as follows that:-
- a. The Appellant/Applicant was the registered proprietor of all that parcel of land known as Land Reference Numbers Kwale/Diani/823 (Hereinafter referred to as “the Suit Property”) which was charged to Consolidated Bank to secure a loan facility.
 - b. The suit property was subject of a sale agreement dated 30th October, 2016 between the 1st Respondent and himself, but which agreement never expressly permitted possession or collection of rent prior to completion of payment of the purchase price.
 - c. The 1st Respondent had not paid any amount out of the agreed purchase price of a sum of Kenya Shillings Eighteen Million Five Hundred Thousand (Kshs. 18,500,000/= despite the agreement stating that he was to offset the bank loan of a sum of Kenya Shillings Twelve Million (Kshs. 12,000,000/=) and the balance of a sum of Kenya Shillings Six Million Five Hundred Thousand (Kshs. 6,500,000/=) within ninety days of the sale agreement.
 - d. The 1st Respondent however failed to comply with the terms of the sale agreement and a demand letter dated 24th June 2025 was served upon him and which he failed to respond to.
 - e. Despite of this, the 1st Respondent unlawfully entered the suit property and had been collecting rent since the year 2016 from the tenants therein without complying with the terms of the agreement, an act which was tantamount to obtaining money by false pretences.
 - f. As a result of the default by the 1st Respondent, the Appellant/Applicant was unable to meet loan repayment obligations on time, resulting in being wrongfully listed under the Credit Reference Bureau (the CRB) and being declared bankrupt thereby causing him serious reputational and financial harm.
 - g. With a lot of difficulties and hardship, he paid and settled the loan and obtained a clearance certificate from the bank though the Charge remained only as an encumbrance on the title pending formal discharge.
 - h. By settling the entire loan, the Appellant/Applicant had demonstrated good faith and sought protection from further loss and injustice.
 - i. However, the 1st Respondent had been threatening him and had infact filed a suit before the lower court in a bid to frustrate him.
 - j. His advocate on record then filed a preliminary objection challenging the jurisdiction of lower court to determine the suit and also pointed out clause 19.2 of the agreement that provided for arbitration in the event that a disagreement arose from the transaction.
 - k. He was dissatisfied by the orders issued on 1st September 2025 in the lower court suit being “MCELC No E051 of 2025 prof Mohamed Abdallah Swazuri - Versus -Kavumbi Nzumbi and Kenya Power Limited Kwale” whereby a temporary injunction was issued restraining the Appellant/Applicant from interfering with the suit property which was rightfully his own.



- l. He stated that the lower court lacks the pecuniary jurisdiction to handle the dispute as the value of the property was over a sum of Kenya Shillings Thirty Million (Kshs. 30, 000, 000/=).
- m. The Appellant/Applicant maintained that unless the orders sought were granted he was bound to suffer substantial and irreparable loss.

III. The response by the 1st Respondent

5. In opposing the application, the 1st Respondent filed a 17 Paragraphed Replying Affidavit sworn by Professor Mohamed Abdallah Swazuri and dated 19th September 2025. He stated as follows that:-
 - a. He was the 1st Respondent herein and well conversant with the facts of the matter before the Court and therefore competent to depone to the affidavit herein.
 - b. He stated that the application before court was premature on grounds that at all material times he was the legal beneficial owner of the suit property having purchased it from the Appellant/Applicant in the year 2016 at a sum of Kenya Shillings Six Million Five Hundred Thousand (Kshs. 6,500,000/-).
 - c. The afore – stated purchase price payment was acknowledged by the Applicant/Appellant.
 - d. That at the time of purchase the suit property it had been charged with Consolidated bank and which loan the deponent fully paid contrary to the assertions by the Appellant/Applicant.
 - e. Having paid the purchase price and the loan with the bank, the Appellant/Applicant vacated the property and handed over vacant possession to him and since then he had had an uninterrupted. Open and peaceful occupation of the suit property.
 - f. On or about 30th July 2025, the Appellant/Appellant in collusion with the 2nd Respondent's officers unlawfully trespassed on the suit property and disconnected electricity supply thereon causing him immense losses and hardships to his tenants.
 - g. The said actions necessitated the filing of the Civil Suit before the Lower Court seeking orders of injunction stopping the Appellant/Applicant from interfering with the 1st Respondent's possession and use of the suit property.
 - h. During the pendency of the application in the lower court, the Appellant/Applicant employed goons who proceeded to demolish the suit property and remove the gate to the premises on 30th August 2025.
 - i. The Appellants further issued the tenants with tenancy agreements and they were directed to pay rent to him by end of September, 2025.
 - j. This necessitated the filing of the application dated 1st September 2025 seeking injunctive orders and which application was granted by the court.
 - k. However the Appellant/Applicant filed a preliminary objection to the suit objecting the jurisdiction of the lower court. The issue of jurisdiction was still alive before the court.
 - l. Despite of the injunctive orders granted by the lower court on 1st September, 2025, the Appellant/Applicant was in full possession of the suit property and was collecting rent from the tenants.
 - m. The court was urged to strike the application and appeal before this court for being premature.



IV. Supplementary Affidavit by the 1st Respondent

6. Further to the Replying Affidavit, the 1st Respondent filed a 9 Paragraphed Supplementary Affidavit dated 23rd September 2025 and sworn by Prof. Mohamed Abdallah Swazuri together with annexures marked as “MAS” annexed thereto. He averred as follows that:-
 - a. He was the 1st Respondent herein and swore this affidavit to provide additional facts and materials to support his Replying Affidavit deponed on 19th September, 2025.
 - b. Subsequent to the payment of the purchase price of a sum of Kenya Shillings Six Million Five Hundred Thousand (Kshs. 6, 500, 000/=) to the Consolidated bank the Appellant/Applicant duly executed transfer documents of the suit property to him.
 - c. Further and towards reaching a completion and/or transfer of the Property, the parties applied for the Letter of Consent from the Land Control Board (LCB) and which was issued having been satisfied that the requisite conditions had been met.
 - d. Therefore, it was clear that the Appellant/Applicant herein withheld details and material facts to hoodwink the court into granting him orders.
 - e. The application was therefore premature and ought to be dismissed.

VII. Submissions

7. On 24th September 2025, in the presence of counsels for both parties, the court directed that the application dated 4th September 2025 be dispensed by way of written submissions. Pursuant to that, all the parties did comply to the said directive as summarised here below.
8. The Honourable Court reserved a date to render its Ruling accordingly.

A. The Written Submissions by the Appellant/Applicant

9. Through the Law firm of Messrs. Angelline Omollo & Associates Advocates, the Appellant/Applicant filed their written submissions dated 8th October 2025 and are filed before court. M/s. Omollo Advocate commenced the submission by providing a brief background of the matter. The Learned Counsel identified the following issues for determination.
 - a. Whether the Appellant has demonstrated substantial loss
 - b. Whether the application was filed without delay
 - c. Whether the appeal is arguable
10. On whether the Appellant has demonstrated substantial loss, it was submitted that the Applicant/Appellant is the registered owner of the suit property and which was subject of a sale between him and the 1st Respondent. That the agreement did not permit possession or collection of rent on the part of the 1st Respondent. the property was initially charged to consolidated bank but the said loan was eventually cleared by the Applicant.
11. It was averred that the 1st Respondent had at first committed to clearing the bank loan but defaulted in doing so forcing the Applicant to step up. The Applicant states in response to the 1st Respondent’s allegations that he had paid off the loan that there is no evidence of payment of the full Kshs 18.5 million has been produced. That the receipts annexed are in the names of a third party and not the 1st



Respondent and the same do not confer beneficial ownership. Further that no clearance certificate or discharge has been produced to demonstrate settlement by the bank.

12. The Applicant stated that the allegations by the 1st Respondent on ownership of the suit property are therefore unsubstantiated and cannot override the express terms of the sale agreement. That unless stay is granted the 1st Respondent is bound to continue unlawfully collecting rent and interfering with the Appellant's quiet possession of the suit property. Reliance was placed on the dictum in the case of: "Machira T/A Machira & Company Advocates - Versus -East Africa Standard [2002] eKLR".
13. On whether the application was filed without delay, it was submitted that the ruling was delivered on 1st September 2025 and the present application was filed on 4th September 2025 and thus no delay has been occasioned.
14. Lastly, the Learned Counsel averred on whether the appeal is arguable and stated that weighty issues have been raised in the application and which include jurisdiction of the lower court, disregard of the express terms of the agreement, whether collection of rent if proof of full payment of the purchase price amongst others. That the said points were not frivolous and thus valid. Court was referred to the holding in the case of "Nairobi City Council - Versus - Tom Ojienda & Associates [Civil Appeal Application] [2022] eKLR. The Court held as follows:-

"An Applicant must demonstrate that they have an arguable Appeal.

That the intended Appeal or appeal if successful, will be rendered nugatory if the stay of execution of the decree, or proceedings is not stayed".
15. The Appellant/Applicant argued that they had annexed a Draft memorandum of Appeal which demonstrated an arguable appeal. The grounds raised identified specific errors by the Lower Court.
16. That in the event the lower court suit was allowed to proceed, then the Appellant/Applicant will be forced to argue his case in a court that lacks jurisdiction to hear and determine the same.
17. In conclusion the court was asked to allow the instant notice of motion with costs.

B. The Written Submissions by the 1st Respondent.

18. The 1st Respondent's submissions was dated 21st October 2025. The submission identified one issue for determination and which was whether the Appellant/Applicant had met the conditions for stay of proceedings in the lower court pending appeal. It was submitted that stay of proceedings is a grievous and fundamental interruption to the right of a party to conduct his litigation towards the trial based on the substantive merits of his case.
19. According to Learned Counsel for the 1st Respondent, the power to stay proceedings is used by the courts sparingly and only in exceptional cases. That the grant of stay pending hearing of an interlocutory appeal in civil matters is a rare and exceptional remedy. On arguability of the appeal, it was submitted that the same should be decided on a case to case basis that in the instant case the 1st Respondent had been in occupation of the suit property since 2016 and it was evident that hardships would be caused on them in the event that the application is allowed.
20. That further no tangible evidence had been attached by the Appellant/Applicant to confirm the allegation that the loan was repaid by him.
21. In conclusion the 1st Respondent urged the Honourable Court to have the Applicant's application for stay of execution and stay of further proceedings be dismissed.



VII. Analysis and Determination

22. I have carefully read and considered the pleadings herein being the application dated 4th September 2025, the Replying Affidavits in opposition and response to the same, the submissions on record from both parties and the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
23. In order to arrive at an informed, reasonable, fair and Equitable decision, the Honorable Court has three (3) framed issues for determination as follows: -
- a. Whether the Notice of Motion application dated 4th September 2025 by the Appellant/Applicant herein has met the threshold for grant of stay of execution and/or further proceedings orders sought.
 - b. Whether the parties are entitled to the reliefs sought.
 - c. Who bears the costs of the application?

ISSUE No a). Whether the application dated 4th September 2025 has met the threshold for grant of stay of execution and/or proceedings orders sought

24. Under this Sub – heading, the Honourable Court shall be examining critically the substratum of the application filed by the Appellant/Applicant being the stay of execution and/or proceedings herein. The conditions of granting an order for stay of Execution and/or proceeding are provided under Order 42 Rule 6 of the Civil Procedure Rules, 2010 as follows; -

Order 42 Rule 6 (1) of the Civil Procedure Rules: -

“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.

No order for stay of execution shall be made under sub rule (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.”
25. From this provisions, for the Court to grant Stay of Execution, there are three (3) ingredients to be considered. These are:-
- a. There is sufficient cause;
 - b. There is substantial loss.
 - c. The application is done without inordinate delay.
 - d. There security for due performance of such Decree or order.



26. Therefore, the court in order to grant the orders for stay of execution and/or proceedings pending appeal, has to rely on the settled principles. The question of whether or not to grant an order for stay of execution and/or proceedings is a discretionary one. This discretionary power must be exercised judiciously. The bone of contention in the matter is the ownership of the suit land and also aspects of transfer and the monthly rental collections from the said suit land. This is a substantial cause and which needs to be determined on merit by Court.
27. The Applicant herein insist that the lower court is bereft of the jurisdiction to file the instant suit given the value of the suit property which it has placed at a sum of Kenya Shillings Thirty Million (Kshs. 30, 000, 000/=). It has also been stated that the parties have failed to exhaust the alternative dispute resolution mechanisms that were part of the terms of the agreement and as such the 1st respondent filed the lower court suit prematurely.
28. The court has to consider if it will be in the interests of justice to grant the same. Ringera J, (as he then was) in “Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 stated that: -
- “As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.
29. The core purpose ought to be that the appeal should not be rendered nugatory. The aspect of being rendered nugatory must be hinged on the basis of whether or not the appeal is arguable on appeal and not whether the appeal will be successful. The court should only be concerned with the question of whether or not the appeal will be rendered nugatory. An arguable appeal only needed to raise a single bona fide point worthy of consideration and need not be one that must necessarily succeed as was held in the case of “Co - operative Bank of Kenya Limited – Versus - Banking Insurance of Finance Union (Kenya) [2015] eKLR”.
30. In the case of “David Morton Silverstein – Versus - Atsango Chesoni [2002] eKLR”, the Court of Appeal citing the case of:- “Kenya Commercial Bank Limited – Versus - Benjoh Amalgamated Limited & Another [1998] eKLR” held that it is not the law that a stay of proceedings cannot be granted but that each case depends on its own facts.
31. Also in the case of:- “UAP Provincial Insurance Company Limited - Versus - Michael John Beckett Nairobi Civil Application No 204 of 2004 LLR 4976[CAK] [O’kubasu,Githinji and Deverell,JJA on 22nd October 2004] the honourable justices held that in order for the Applicant to succeed in an application for stay of proceedings pending appeal it is necessary for the applicant to satisfy the court, firstly that the pending appeal is an arguable one, which is not frivolous and secondly that if the stay of proceedings is not granted the appeal when ultimately heard will be a futile exercise.
32. On the issue of time. The Ruling the Applicant has appealed against was delivered on 1st September 2025. The Memorandum of Appeal is dated 4th September 2025. The four (4) day period could not be



said to have been inordinate. The court is thus satisfied that the present application was filed without any delay.

33. The 1st Respondent on the other hand maintains that the suit property rightly belongs to him. That after purchase the applicant facilitated transfer of the same by filing the necessary documentation a fact that he had not disclosed to court. also that the lower court suit challenged the actions by the applicant of receiving rent from the tenants and further the disconnection of power by the 2nd Respondent on the suit property.
34. The 1st Respondent maintains that a final determination of his application before the lower court had not been granted and was pending and that the interim orders were to simply stop further invasion of the suit property by the Applicant/Appellant and the 2nd Respondent herein.
35. From the arguments by both parties, it is clear that in the event the court does not grant an order for stay of proceedings and the Appeal herein is heard and is successful, the proceedings in the lower court would have been rendered unnecessary and a clear waste of Judicial time which must not be wasted in proceedings that would end up being academic exercises. See the case of:- “Muchanga Investments Limited – Versus - Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR.
36. It is noted further that very pertinent issues have been raised in the appeal and which include the jurisdiction of the lower court in determining the dispute before it, the terms of the agreement and more specifically the clause on dispute resolution. The court also notes that the execution of the agreement and whether the parties met their respective obligations as was agreed upon is also a very significant issue between the parties. It will be in the interest of justice that a clear guideline is given especially on the jurisdiction of the lower court so as to aid in the timeous disposal of the dispute between the parties as a whole.
37. It is apparent that the above can only be made possible through stay of proceedings at the lower court in order for this court to make a determination on the appeal whose findings will chart the way forward on disposal of the matter. This court is in agreement with the dictum in the case of: “Iddi Halfani - Versus - Ahmed Binti Athumani [1962] EA 76” where it was held that the court has discretion to stay proceedings and the possibility of the cross action being successful is to be taken into account.
38. I am alive to the fact that the issue of rent collection has been canvassed by both parties with each claiming the same. At this point the court is not able to tell which of the parties is truly entitled to rent collection in the suit property. This is an issue that can fully be determined after hearing of the suit.
39. In the interest of justice, the court opines that it will be proper for the same to be paid in a joint interest earning account as the parties await the outcome of the suit.

Issue No. c). Who bears the costs of the application?

40. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the [Civil Procedure Act](#) Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action.
41. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects to have the costs abide by the outcome of the appeal.
42. Conclusion and Final Orders



43. Consequently, having caused an indepth analysis of the framed issues herein, based on the Principles of Preponderance of Probabilities and the balance of convenience, the Honourable Court specifically makes the following orders:-

- a). That the Notice of Motion application dated 4th September 2025 be and is hereby wholly allowed and with the following terms:-
 - i. there be a stay of execution and/or further proceedings pursuant to the order issued in MCELC No E051 of 2025 Prof Mohamed Abdallah Swazuri Versus Kavunza Nzumbi and Kenya Power and Lighting Company at Kwale on 1st September 2025 pending the hearing and determination of the appeal herein.
 - ii. The Learned Counsels for the Appellant and the 1st Respondent herein being Messrs. Angelline Omollo & Associates and Messrs. CSA Advocates LLP directed to open a joint Escrow bank interest earning account from a reputable commercial institution within the next 14 days of the delivery of this Ruling solely for purposes of depositing monthly rental collection from the suit property.
 - iii. There be an order that parties to maintain good and proper books of audited accounts on all the income and the expenditures accrued emanating and/or in relation to the suit property.
 - iv. Eventually, the said records of accounts and audit to be filed in Court.
- a. That for expediency sake, the Appellant/Applicant granted 21 days leave to compile and serve well bound and paginated Record of Appeal.
- b. That there be a mention of the matter on 6th May, 2026 for purposes of taking express direction on the Admission and the mode of the disposal of the Appeal pursuant to the provision of Section 79B of the *Civil Procedure Act*, Cap. 21 and Order 42 Rules 11, 13 and 16 of the Civil Procedure Rules, 2010 thereof.
- c. That Costs of the instant application to abide by the outcome of the Appeal.

It is ordered accordingly.

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 4TH DAY OF FEBRUARY 2026

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HON. MR. JUSTICE L.L NAIKUNI,
ENVIRONMENT & LAND COURT
AT
KWALE.

Ruling delivered in the presence of: -

Mr. Daniel Disii, the Court Assistant.

M/s. Ndungu Advocate holding brief for M/s. Omollo Advocate for the Appellant/Applicant.

No appearance for the 1st & the 2nd Respondents.

