



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCLA E042 OF 2025**

FRANCIS MAINA MWANGI.....APPELLANT/APPLICANT

**VERSUS**

JANE MWIHAKI KURIA .....RESPONDENT

***(Being an Appeal from the Judgment of the Court Murang'a MC ELC Case No. E084 of 2024 as delivered on the 15/10/2025 by Hon. S.N. Mwangi)***

## **RULING**

- 1) This ruling is on the notice of motion dated 11-11-2025. The motion which is by the Appellant is brought under **Sections 1A, 1B and 3A** of the Civil Procedure Act and **Order 22 rules 22 and 52** of the Civil Procedure Rules. The motion seeks two residual orders.
  - (b) **The Court be pleased to grant an order allowing the firm of M/s Kirubi, Mwangi Ben and Co. Advocates to come on record for the Appellant in place of M/s Kibe Njoroge and Co. Advocates.**
  - (c) **Stay of execution of the judgment and decree of the Court issued in Murang'a Chief Magistrate Court Case No. MCELC No. E084 of 2024 pending the hearing and determination of this appeal.**
- 2) The motion is supported by the affidavit of the Appellant dated 11-11-2025 which has two(2) annexures which are a copy of the judgment dated 15-10-2025 and a copy of the memorandum of appeal dated 10-11-2025. In addition to the affidavit, there are six(6) grounds in the motion. The gist of the grounds and the affidavit is as follows. Firstly, the judgment appealed against was delivered on 15-10-2025 and the stay of 30 days granted by the court has lapsed. Secondly, the appeal has been filed expeditiously and without delay. Thirdly, the appeal raises serious and meritable grounds. Fourthly, the Respondent is still in occupation of the suit land and there is no prejudice to be occasioned to her if the order of

stay of execution is allowed. Finally, execution will render the appeal academic and nugatory.

- 3) The Respondent has sworn a replying affidavit dated 2-2-2026 in which she replies as follows. One, the motion is only meant to delay the Respondent from enjoying the fruits of her litigation as the motion is not merited and the reasons advanced by the Appellant are not plausible. Two, there is no proof that the Respondent is about to execute the decree of the lower court. Three, no security has been provided by the Appellant and he lacks commitment in his case and the application deserves to be dismissed. Four, the Appellant's counsel is not properly on record and has not complied with **Order 9 rule 9** of the **Civil Procedure Rules**. Finally, the appeal itself does not raise triable issues and this application should not be allowed.
- 4) I have carefully considered the motion in its entirety including the grounds, the affidavits and annexures. Since there are no submissions filed, I will treat the four issues raised in the replying affidavit as the issues for determination.
  - (i) **Whether the Respondent will be delayed in enjoying the fruits of her litigation.**
  - (ii) **Whether execution is imminent.**
  - (iii) **Whether the Appellant has offered any security for the due performance of the decree.**
  - (iv) **Whether the Appellant's counsel is properly on record.**
- 5) On the first issue, I find that the Respondent is already enjoying the fruits of her judgment. She is in occupation of the suit land. The only thing she will not get while the appeal is pending is the title to the land that she occupies. For now, the Respondent has nothing to lose as she will remain in occupation until the conclusion of the appeal.
- 6) There is no evidence that execution of the decree of the lower court is imminent but without a stay of execution, it could proceed as the appeal pends. It is therefore reasonable to seek to

stay execution because the appeal could take long and execution could proceed in the intervening period.

7) This is one case where the Appellant need not offer any security for the due performance of the decree because the land which the Respondent occupies is immovable property which is available in the event that the appeal by the Appellant is unsuccessful. It is also my finding that the appeal was filed in good time. The Judgment was on 15-10-2025 and the appeal was filed on 11-11-2025 which is within the **30 days** allowed in **Section 79G** of the Civil Procedure Act. In summary therefore, the Appellant has satisfied the conditions set out in **Order 42 rule 6(2) Civil Procedure Rules** for the grant of an order of stay of execution which are proof of substantial loss, provision of security for the due performance of the decree and filing of the application and the appeal without unreasonable delay.

8) Coming to the final issue of whether the Appellant's counsel is properly on record, I find that he is. My understanding of **Order 9 rule 9** of the **Civil Procedure Rules** is that it applies to the primary suit. In other words, the Appellant's counsel would be required to comply with that rule if he was appearing in the lower court after judgment. He is not appearing in the lower Court but before this Court on appeal. He need not to comply with **Order 9 rule 9** of the **Civil Procedure Rules** since thus is a new matter altogether.

For the above stated reasons, I find **merit** in the motion dated 11<sup>th</sup> November 2025 and I **allow** it in terms of prayers **(b)** and **(c)**. Costs in the cause.

**It is so ordered.**

**Dated, Signed and Delivered virtually at Murang'a this 24<sup>th</sup> day of February, 2026.**

**M.N. GICHERU**  
JUDGE.

Delivered online in the presence of: -  
Court Assistant –Jackline  
Appellant's Counsel - Mr Kirubi

**Respondents – Present in person**