

REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT  
AT KAJIADO  
ELCLA E065 OF 2025

ONESMUS WANYOIKE MUNYUA (*suing as the  
personal legal representative of the estate of*

KENNETH KAHURO MUNYUA .....APPELLANT/APPLICANT

VERSUS

MACKLINE KERUBO MAKORI.....1<sup>ST</sup> RESPONDENT

DISTRICT LANDS REGISTRAR KAJIADO NORTH.....2<sup>ND</sup> RESPONDENT

RULING

*(In respect of the Appellant’s Amended Motion dated 6<sup>th</sup> November, 2025 seeking stay of execution  
of the judgment and decree of Hon. A.N. Makau (SPM) delivered in Ngong Chief Magistrate’s Court*

*MCELC 73 of 2019)*

Introduction

1. The Appellant, through his Amended Notice of Motion dated 6 November 2025, seeks the following orders:
  - a. Spent.
  - b. Spent.
  - c. That this Honourable Court be pleased to grant the Applicant/Appellant a stay of execution of the Judgment and Decree delivered on 24 October 2025 by Hon. A.N. Makau (SPM) in *Ngong ELC Case No. 73 of 2019 – Onesmus Wanyoike Munyua vs*

*Mackline Kerubo Makori & Another*, pending the hearing and determination of the Appeal or until further orders of this Court.

- d. That the costs of this Application be in the cause.
2. The Motion is supported by the Affidavit of Onesmus Wanyoike Munyua and is brought under Sections 1A, 1B, 3A, 63(e) and 79G of the Civil Procedure Act, Order 42 Rules 6 and 1, and Order 51 Rule 1 of the Civil Procedure Rules, 2010.
3. It is averred that the Appellant has preferred an appeal against the judgment of Hon. A.N. Makau (SPM) delivered on 24 October 2025 in Ngong Chief Magistrate's Court MCELC No. 73 of 2019, being dissatisfied with the decision that dismissed his suit and allowed the 1st Respondent's counterclaim.
4. Pursuant to the judgment, the Appellant was ordered to transfer KAJIADO/OL CHORE/2453 to the 1st Respondent and was permanently restrained from interfering with the property. The Appellant contends that unless the orders sought are granted, he will suffer great prejudice and injustice, and his appeal— which he considers arguable and with high chances of success—will be rendered nugatory. He further avers that the Application was filed without delay and that he is willing to provide such security as this Court may direct.

#### **1st Respondent's Case**

5. The Application is opposed by the 1st Respondent, Mackline Kerubo Makori, through her Replying Affidavit sworn on 20 November 2025. She seeks dismissal of the Application with costs, terming it stale and misconceived.

6. According to the 1st Respondent, the Appellant has not satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for grant of stay. She contends that the Appellant has neither demonstrated substantial loss nor offered security for the due performance of the decree.
7. She further asserts that the Application is merely a delaying tactic intended to frustrate execution of a lawful and well-reasoned judgment delivered in her favour. She maintains that the lower court correctly found that she had proved her case on a balance of probabilities.
8. In the event that this Court is inclined to grant stay, the 1st Respondent urges that the Appellant be compelled to deposit the title documents to the suit property and the letters of administration in Court pending the hearing and determination of the Appeal, to prevent any possible transfer or charge of the property to third parties.

**Court Directions**

9. With the concurrence of counsel for both parties, the Application was canvassed by way of written submissions. Both parties duly complied. The submissions form part of the Court record and are premised on Order 42 Rule 6 of the Civil Procedure Rules regarding the conditions for stay of execution pending appeal.

**Determination**

10. Upon careful analysis of the Appellant's Notice of Motion, the 1st Respondent's Replying Affidavit, and the submissions of learned counsel, the single issue for determination is whether the Appellant has met the threshold for grant of stay of execution of the

judgment delivered on 24 October 2025 by Hon. A.N. Makau (SPM) in Ngong ELC Case No. 73 of 2019 pending the hearing and determination of the Appeal.

11. The applicable legal framework is Order 42 Rule 6(2) of the Civil Procedure Rules, which provides:

*“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.”*

12. The purpose of stay of execution pending appeal was explained in RWW v EKW [2019] KEHC 6523 (KLR) as follows:

*“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal, if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the right of a successful litigant who should not be deprived of the fruits of his or her judgment. The court must also ensure that no party suffers prejudice that cannot be compensated by an award of costs.”*

13. Further, in Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR), the Court of Appeal held:

***“It is in the discretion of the court to grant or refuse a stay, but what has to be judged in every case is whether there are particular circumstances to make an order staying execution. The court ought to exercise its best discretion in a way so as not to prevent an appeal, if successful, from being rendered nugatory.”***

14. The lower court judgment delivered on 24 October 2025 ordered the Appellant to transfer the suit property to the 1st Respondent and permanently restrained him from interfering with it. The Appellant has filed a Memorandum of Appeal raising several grounds, including alleged errors in law and fact in validating the agreement and in applying the doctrines of constructive trust and proprietary estoppel.
15. On the issue of delay, the judgment was delivered on 24 October 2025, and the present Application was filed on 3 November 2025. The Application was therefore filed approximately seven (7) days after delivery of the judgment. I find that there was no unreasonable delay.
16. On substantial loss, the decree compels transfer of the suit property to the 1st Respondent. If execution proceeds and the property is transferred, the substratum of the Appeal will be fundamentally altered. Any subsequent dealings with the property, including transfer to third parties or creation of encumbrances, may render the Appeal nugatory or lead to complex legal consequences that may not be adequately remedied by damages.
17. The suit property is the central subject matter of the Appeal. Preservation of that property pending determination of the Appeal is therefore necessary to safeguard the

Appellant's right of appeal. I am satisfied that the Appellant has demonstrated the likelihood of substantial loss if stay is not granted.

18. Regarding security, the Appellant has expressed willingness to comply with any conditions imposed by the Court. In balancing the competing interests of both parties, it is appropriate to grant stay on terms that safeguard the 1st Respondent's interests.

19. In that regard, the court directs that an inhibition be registered against the title of the suit property KAJIADO/OL CHORE/2453 forthwith to remain in place pending the hearing and determination of this appeal.

#### Order

20. In the circumstances, the Application dated 6 November 2025 is hereby allowed on the following terms:

- a. There shall be a stay of execution of the Judgment and Decree delivered on 24 October 2025 by Hon. A.N. Makau (SPM) in Ngong ELC Case No. 73 of 2019 pending the hearing and determination of the Appeal.
- b. An inhibition be registered against the title of the suit property KAJIADO/OL CHORE/2453 forthwith to remain in place pending the hearing and determination of this appeal
- c. Costs of the Application shall be in the cause.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 19<sup>th</sup> Day of February 2026.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Peter Ngugi h/b for Mr. Njagi for the Appellant/Applicant

Ms. Kariuki for the Respondents

Court Assistant: Mpoye

**M.D. MWANGI**  
**JUDGE**