



**Wainaina v Archdiocese of Nairobi Kenya Registered Trustees (In Trust  
for St Agnes Catholic Church, Kangoya–Kiambu) (Tribunal Appeal  
E053 of 2025) [2026] KEHC 1622 (KLR) (Civ) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1622 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
TRIBUNAL APPEAL E053 OF 2025  
WA OKWANY, J  
FEBRUARY 12, 2026**

**BETWEEN**

**MICHAEL KARANJA WAINAINA ..... APPELLANT**

**AND**

**ARCHDIOCESE OF NAIROBI KENYA REGISTERED TRUSTEES (IN TRUST  
FOR ST AGNES CATHOLIC CHURCH, KANGOYA–KIAMBU) RESPONDENT**

**RULING**

**Background**

1. The parties herein entered into lease agreements which permitted the Appellant to erect temporary structures on the suit premises. The agreements expressly required removal of the structures upon termination of the tenancy.
2. Following the termination of the agreements, the Tribunal ordered the Appellant to remove the structures within 30 days. Dissatisfied with that decision, the Appellant lodged the present appeal and filed the instant application.

**The Application**

3. The Applicant filed the application dated 23<sup>rd</sup> October 2025 seeking orders of stay of execution of the ruling delivered on 1<sup>st</sup> October 2025 by the Business Premises Rent Tribunal (BPRT Case No. E731 of 2025) and a consequential order restraining the Respondent from removing or demolishing structures erected on Kiambu Municipality Block 1/143, pending the hearing and determination of the appeal.
4. The application is supported by the Appellant's affidavit and written submissions.



5. The Respondent opposed the application through a replying affidavit sworn by Rev. Father Henry Kiritu and written submissions dated 3<sup>rd</sup> November 2025.
6. The application was canvassed by way of written submissions which I have considered.

### **The Appellant's Submissions**

7. The Appellant submitted that he erected the structures with the knowledge and consent of the Respondent using his own resources and that their demolition would occasion irreparable and substantial loss thus rendering the appeal nugatory, as the structures cannot be restored to their original state.
8. The Respondent cited the decision in Paul Kamura Kirunge vs. John Peter Nganga [2019] eKLR, the purpose of stay was discussed and the court held that it is to preserve the subject matter in dispute so that the right of appeal is safeguarded and the appeal, if successful, is not rendered nugatory.
9. The Appellant urged the Court to grant stay and restraining orders, arguing that no prejudice would be suffered by the Respondent.

### **The Respondent's Submissions**

10. The Respondent submitted that the leases expressly obligated the Appellant to remove all structures upon termination, an obligation the Appellant freely accepted.
11. It was submitted that compliance with contractual obligations cannot amount to substantial loss as any alleged loss is quantifiable, as shown in the valuation report that the Applicant relied upon.
12. The Respondent noted that the Appellant has not offered any security for the due performance of the decree which is a mandatory requirement under Order 42 Rule 6 of the Civil Procedure Rules.
13. It was the Respondent's case that granting stay or injunctive relief would unjustly aid the Appellant in avoiding contractual obligations and deny the Respondent enjoyment of its property.
14. The Respondent relied on *Giella vs. Cassman Brown* [1973] EA 358, *Gianfranco Manenthi & Another vs. Africa Merchant Assurance Co. Ltd* [2019] eKLR, and *Machira T/A Machira & Co. Advocates vs. East African Standard* [2002] KLR 63, urging dismissal of the application with costs.

### **Analysis and Determination**

15. Order 42 Rule 6(2) of the Civil Procedure Rules (CPR) provides that: -

“No order for stay of execution shall be made... 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.”

### **Delay**

16. The ruling appealed from was delivered on 1st October 2025, and the instant application filed on 23rd October 2025. I find that the application was filed without unreasonable delay.



## Substantial Loss

17. In *Kenya Shell Ltd vs. Kibiru* [1986] KLR 410, Platt JA held that: -

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”

18. I concur with the Respondent’s position that compliance with lease obligations does not, without more, amount to substantial loss. I however note that demolition of the structures before the appeal is heard would permanently alter the subject matter of the appeal. This places the Court squarely within the principle stated in *JMM vs. PM* [2018] eKLR where it was held: -

“We are faced with a situation where a judgment has been given. It may be affirmed or it may be set aside. We are concerned with preserving the rights of both parties pending the appeal.”

## Security

19. Order 42 Rule 6(2)(b) of the CPR makes provision of security mandatory. In *Focin Motorcycle Co. Ltd vs. Ann Wambui Wangui* [2018] eKLR, it was held that the purpose of security is to guarantee the due performance of the decree and not to punish the judgment debtor.

20. In *Carter & Sons Ltd v Deposit Protection Fund Board & 2 Others* (CA No. 291 of 1997), the Court of Appeal held:

“The offer for security must come from the applicant as a price for stay.”

21. In the instant case, the Applicant did not propose any security. I find that the court still retains discretion to determine the appropriate security. In doing this, the court is required to balance the Applicant’s right of appeal and the Respondent’s right to enjoy the fruits of its decision and property.

22. In *Mwaura Karuga t/a Limit Enterprises vs. Kenya Bus Services Ltd & 4 Others* [2015] eKLR, the Court held that security must be one which shall achieve due performance of the decree which might ultimately be binding on the applicant.

23. Given the irreversible nature of demolition and the contractual context, the Court is persuaded that a conditional stay, strictly regulated and time-bound, will best serve the interests of justice.

24. Consequently, while I find that the Appellant has not fully satisfied the traditional test of substantial loss, the risk of irreversible alteration of the subject matter warrants preservation through a conditional stay, coupled with adequate safeguards for the Respondent. I therefore make the following final orders:

-

a. There shall be a stay of execution of the ruling delivered on 1st October 2025 in BPRT Case No. E731 of 2025 pending the hearing and determination of this appeal, on the following conditions:

- i. The Appellant shall deposit security in the sum of Kshs. 250,000 within 30 days of this ruling;
- ii. The security shall be deposited in a joint interest-earning account in the names of counsel for the parties;
- iii. The Appellant shall not undertake any further construction, alteration, or commercial exploitation of the suit premises pending appeal.



- b. In default of compliance with any of the above conditions, the stay shall automatically lapse without further order of the Court.
- c. Costs of the application shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026.**

**HON W. A. OKWANY**

**JUDGE**

In the presence of

Mutemi for Applicant

Miss Watitu for Respondent

Abdirzak - Court Assistant

