

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**  
**ELC NO. E059 OF 2025**

**REUBEN** **MILIMO**  
**AKOLO**-----**APPLICANT**

**VERSUS**

**JOSEPH OJUNA MESHACK**-----  
**RESPONDENT**

**RULING**

1. The court, by an application dated **2/12/2025**, is asked to stay the execution of a judgment at the lower court, delivered on **11/11/2025**, by preserving the use and possession of  $\frac{1}{2}$  **point** of title No. **Kiminini/Kinyoro Block 10/Kareu/12**. In the supporting affidavit sworn on **2/12/2025**, the appellant/applicant deposes that his intended appeal raises an arguable point, he stands to suffer substantial and irreparable loss, in the absence of a stay order, for he is likely to be evicted from **0.2 point** portion of the suit land, including the **1  $\frac{1}{2}$  points** which he has fully paid for in cash.
2. The applicant deposes that the respondent shall suffer no prejudice if the orders are granted, for he

is willing to clear the lawful balance of **Kshs.50,650/=**, as per the **2014** sale agreement.

- 3.** Stay of execution is governed by **Order 42 Rule 6** of the Civil Procedure Rules. The parameters to consider are whether the application has been filed without unreasonable delay, if substantial loss may result, and whether security for the due realization of the decree, should the appeal fail, has been availed.
- 4.** In **James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2012] eKLR**, the court said that execution *per se* does not amount to substantial loss and that an applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal. The court held that substantial loss is what has to be prevented by preserving the status *quo*, because the loss would render the appeal nugatory.
- 5.** In **Port Reitz Maternity -vs- James Karanja Kabia Civil Appeal No. 63 of 1997**, the court held that the right to appeal must be balanced against the weighty right that the plaintiff is entitled to enjoy the fruits of his judgment, and that there

must be a just cause for depriving the plaintiff of that right.

6. In **RWW -vs- EKW [2019] eKLR**, the court said that the purpose of an application for stay of execution pending appeal is to preserve the subject matter in dispute, so that the rights of the appellant are safeguarded, while at the same time ensuring that the successful party is not deprived enjoyment of the fruits of his judgment without justification. In doing so, the court ensures that no party suffers prejudice that cannot be compensated by way of costs.
7. In **Kenya Shell Limited -vs- Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR)**, the court opined that if there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory. The court held that substantial loss takes various forms, being the cornerstone of the stay.
8. Applying the foregoing case law to the instant suit, in the judgment rendered on **11/11/2025**, the successful party was the appellant. The trial court granted an injunction restraining the respondent herein from interfering with the appellant's use and occupation of structures on plot No.

**Kiminini/Kinyoro Block 10/Kareu/12** measuring **1** and **1½** of an acre.

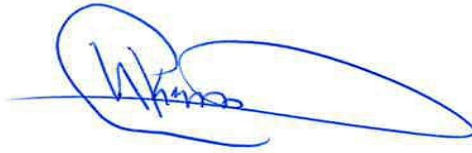
- 9.** The trial court declined to issue other reliefs in the plaint dated **16/4/2018** for reasons given in the judgment. It appears that the appellant is aggrieved by part of the judgment, and he preferred an appeal.
- 10.** What appears strange is that the appellant seeks the court to stay the execution of a judgment that is partly in his favour. In paragraph **5** of the supporting affidavit, he says that if there are no stay orders, the respondent will evict him from the land. Whereas I appreciate that the appellant is in person, from the affidavit, the application, and the memorandum of appeal, it is apparent to me that the appellant does not understand the implications of what he is up to before the court.
- 11.** His application seeks to stop the execution of a decree that is in his favour. It is only the applicant who can cause the execution of the decree which was in his favour at the lower court against the respondent, and not the other way round. This is a clear case of litigants being misled by agents of doom who are enemies of justice. The applicant is perhaps being misled into believing that no justice was delivered in his favour in the lower court.

- 12.** The trial court issued an injunction against the defendant, now respondent, in his favour. He had stated at the lower court that he paid consideration for the **1** and **1 ½ points** for the subject land to the respondent, who has refused to transfer the land or accept the balance. The trial court found that it was the respondent who had breached the sale agreements.
- 13.** Now the applicant wants to stay the orders that he has obtained in his favor at the lower court. This is the height of absurdity courts face at a time when the parties, despite wins, are misled into believing that the court is their enemy, yet the opposite is true.
- 14.** I think I have said enough to demonstrate that the application before me is not only unmerited but also unnecessary. It is dismissed with no order as to costs.
- 15.** Orders accordingly.

**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **4<sup>th</sup>** day of **March 2026**.

**In the presence of:**

Court Assistant - Dennis  
Applicant in person present  
Respondent absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

ORIGINAL COPY