



**Lelei v Bittock & another (Environment and Land Case
414 of 2012) [2026] KEELC 1304 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1304 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 414 OF 2012**

CK YANO, J

MARCH 5, 2026

BETWEEN

KIMUTAI LELEI PLAINTIFF

AND

HOSEA BITTOCK 1ST DEFENDANT

**THE MANAGEMENT COMMITTEE KAPSABET BONDENI SELF HELP
GROUP 2ND DEFENDANT**

RULING

1. The Plaintiff/Applicant filed a Notice of Motion Application dated 27th October, 2025 against the defendants/respondents, seeking the following orders: -
 1. Spent
 2. That leave be granted to the firm of Muhatia Pala & Associates Advocates (MPS) to come on record for the Plaintiff/Applicant instead of Wambua Kigamwa & Co. Advocates.
 3. That this honourable court be pleased to issue an order that status quo be maintained in respect of the suit property namely Pioneer/Ngeria Block 1 (EATEC)/113 pending the hearing and determination of this application interpartes.
 4. That this honourable court be pleased to issue an order of stay of execution of the Eviction Order dated 25th February, 2020 and Decree issued on pending the hearing and determination of this application interpartes.
 5. That the costs of this Application be provided.
2. The application was premised on the 6 grounds on the face thereof and on the plaintiff/applicant's supporting affidavit sworn on even date.



3. He deponed that judgment was delivered in the matter on 31.07.2019 and a decree issued to that effect.
4. It is his claim that the 1st defendant/respondent obtained an Eviction Order dated 25.02.2020 and he intends on evicting him and his family from the suit property, which he had been using and has even buried some of his children therein.
5. He contends that the execution of the Eviction Order will desecrate his children's graves, destroy sentimental property and cause him irreparable loss, emotional distress and cultural harm.
6. He maintained that the suit property is his matrimonial home and he had been residing thereon together with his family for 29 years and in the event of execution of the eviction order, they risk being rendered homeless.
7. In conclusion, he urged the court to allow the application in the interest of justice and grant the orders of maintenance of status quo and stay of execution.
8. The application was opposed. The 1st defendant/respondent filed a Replying Affidavit dated 19.11.2025. He dismissed the application as being incompetent, misconceived, malicious, vexatious and an abuse of the court process.
9. He admitted that the suit herein was determined by the court vide a judgment rendered on 31.07.2019. It was however his claim that the plaintiff has been filing endless applications to avert eviction from the suit land since judgment was delivered in 2019.
10. He deponed that the plaintiff filed a notice of appeal twice on 10.12.2019 and on 25.02.2020 but failed to file a record of appeal. Consequently, the court ordered the withdrawal of both notices of appeal and vacated the stay orders dated 04.12.2019 vide the ruling issued on 04.11.2020.
11. It was his contention that despite the applicant being granted ample opportunities to be heard on several occasions, he has failed to file a record of appeal and hence cannot be heard stating that he will be prejudiced or suffer loss. He maintained that the applicant should not be allowed to benefit from his own incompetence.
12. He argued that the application has been filed in bad faith and amounts to a delaying tactic to frustrate the 1st defendant's execution of the judgment issued on 31.07.2019 in his favor and which among other things ordered for the eviction of the applicant from the suit land.
13. He maintained that he was declared as the true and absolute owner of the suit land and that he should be allowed to enjoy the fruits of his judgment.
14. He deponed that despite the plaintiff/applicant being ordered to give vacant possession of the suit land or an eviction notice to issue, it is now 6 years since the judgment was issued but his right to vacant possession of the suit land has been paralyzed by the plaintiff's endless applications.
15. In conclusion, he stated that it is in the interest of justice that the application be dismissed with costs.
16. The application were canvassed by way of written submissions. The plaintiff/applicant filed his submissions dated 11.12.2025 while the 1st defendant/respondent filed his submissions dated 04.12.2025 together with authorities which I have read and considered.



Analysis and Determination:

17. I have carefully considered the grounds Notice of Motion Application, the Supporting Affidavit and the Affidavit in response as well as the rival submissions thereto and the various authorities cited. Consequently, it is this court's considered opinion that the following issues arise for determination: -
- i. Whether orders sought in the present application are tenable
 - ii. Whether the present Application is merited.
 - iii. Who should bear the costs of the Application.

Whether orders sought in the present application are tenable;

18. The first issue seeks to determine whether the orders of stay of execution of the eviction orders and the orders of status quo sought in the present application are tenable.
19. Firstly, it is important to point out that the orders (3) and (4) in the application have been framed/ sought pending the hearing and determination of the application interpartes. In essence therefore, the same not having been granted in the first instance, the orders as sought are deemed to have been spent and therefore there is nothing to determine.
20. Moreover, the orders as sought are vague. It is not clear to what end and/or extent the orders sought seeks to remain in force, pending what? There is neither an appeal pending at the court of appeal in respect to the judgment entered on 31.07.2019, nor orders of review and/or setting aside of the said orders or at all.
21. Secondly, the orders of stay of execution have been sought against the eviction orders issued pursuant to the judgment and decree of Hon. Justice M. Odeny issued on the 31.07.2019.
22. It is the 1st respondent's contention that the applicant filed 2 notices of appeal dated 10.12.2019 and 25.02.2020 but in both instances failed to file the requisite record of appeal. Consequently, the court ordered the withdrawal of both notices of appeal and vacated the stay orders issued on 04.12.2019 vide a ruling dated 04.11.2020 and annexed a copy of the said ruling. The applicant did not file a Further Affidavit to rebut the said averment and they thus remain uncontroverted.
23. The applicant on the other hand in his submissions, on issue no. 2 of stay of execution acknowledged/ confirmed that after the issuance of the judgment, he sought stay of execution pending appeal before this court as well as before the Court of Appeal, which was denied.
24. It is therefore evident that there are no subsisting/valid orders of stay of execution of the judgment issued on 31.07.2019 and the resultant decree issued by this court or the Court of Appeal. The same was either vacated and/or denied.
25. The question that therefore follows is whether in the absence of any orders of stay of execution of the judgment and decree of this court differently constituted, (Hon. Justice M. Odeny) this court can issue an order of stay of execution against the eviction orders ensuing from the decree.
26. The answer to the above is in the negative. This application is an attempt by the applicant at having a second bite at the cherry without a justifiable and sufficient cause and without a definite period within which said orders if granted should remain in force, bearing in mind that there is no pending appeal in the instant case.



27. In the case of RWW v EKW [2019] eKLR, the court while discussing the purpose of an order of stay of execution held 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 success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

28. The actions by the applicant thus amounts to an abuse of the court process intended to delay justice and deny the 1st respondent the fruits of his judgment.

29. In the premises, it is the finding of this court that the orders sought in the present application are untenable and the same cannot therefore be granted as sought for the aforesaid reasons.

Whether the present Application is merited;

30. The second issue seeks to determine whether the application as filed is merited to warrant the grant of the orders sought.

31. Having held that the orders sought in the application are untenable in issue no. (i) above, it therefore follows that the present application is not merited and the plaintiff/applicant is not entitled to the orders sought.

Who shall bear the Costs of the application;

32. The award of costs is guided by the principle that costs shall follow the event unless the court directs otherwise.

33. In this case, having held that the Application is not merited, I find that the 1st defendant/respondent is entitled to costs of defending the application.

Conclusion:

34. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 27th October, 2025 is not merited and is hereby dismissed with costs to the 1st Defendant/Respondent.

35. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF MARCH, 2026.

HON. C.K. YANO

JUDGE

Ruling delivered in the presence of: -

Mr. Hosea Bittok 1st Defendant present in person.

No appearance for Pala for Plaintiff/Applicant.

No appearance 2nd Defendant.

Court Assistant – Laban

