

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELC APPEAL NO. E001 OF 2026

MOKI MUTUA

.....APPELLANT

=VERSUS=

MOSES OLE LEINA.....1ST

RESPONDENT

REGISTRAR OF LAND TAITA TAVETA2ND

RESPONDENT

DISTRICT LAND & ADJUDICATION OFFICER,

TAITA TAVETA3RD

RESPONDENT

RULING

1. This is a ruling in respect to a Notice of Motion dated 14th January 2026 in which the Applicant seeks stay of execution pending appeal.
2. A party seeking a stay of execution has to apply without unreasonable delay, demonstrate substantial loss to be suffered and offer security for due realization of the decree should the appeal not succeed. The said requirements are

clearly outlined under **Order 42, Rule 6 (2) of the Civil Procedure Rules 2010.**

3. A stay of execution under order 42 of the Civil Procedure Rules is an interim order to suspend the rights of one party who is aggrieved with the judgment of the trial; court or tribunal and wishes to exercise his or her right of appeal. Its main objective is to protect the substratum of the suit by delaying the execution process like attachment until the determination of the appeal. Being a discretionally remedy the applicant must demonstrate that he or she has approached the court of equity with clean hands as succinctly stated in the case of **Jajbhay v Cassim 1939 AD 537-551** the court held on this maxim that:

“All writers upon our law agree in this, no polluted hand shall touch the pure fountains of justice.”

4. The Applicant has sought for stay through the application dated 14th January 2025, which application is premised on the grounds on its face and the supporting affidavit sworn by the Applicant on even date and a further affidavit sworn on 19th February 2026.

5. It was averred that the Learned Magistrate **Hon. C. K. Kithinji SPM** delivered her judgment on 11.12 2025 in favour of the 1st Respondent. The judgment inter alia directed the revocation of his title deed for land parcel Taveta/Taveta Scheme Phase 1/178, grant of vacant possession within 90 days and payment of mense profits with interest from the date of the judgment. It was also averred that he was aggrieved by the said judgment and has appealed to this court. The trial court granted 30 days stay which if lapses execution may proceed.
6. The application was opposed by the 1st Respondent vide grounds of opposition dated 30th January 2026. It was contended that the application does not meet the requirement for grant of the stay orders sought, no substantial loss has been demonstrated, and the fact that execution has been put in motion does not in itself amount to substantial loss, it was further contended that the Applicant has not shown any willingness to deposit the decretal sum as may be binding to him and parties herein have been involved in protracted litigation since 2003 and

litigation must come to an end. The court was urged to dismiss the application with costs.

7. The court in considering the application directed that the same be canvassed by way of written submissions. The Applicant filed written submissions dated 20. 02. 2026 while the Respondents had not filed any written submissions as at the time the court retired to write its ruling.
8. The Applicant submitted that he has established that there is arguable appeal and substantial loss will be suffered if stay is not granted since the appeal would be rendered nugatory. Reliance was placed on the cases of **Karsan Ramji & Sons Limited vs Shaban Athumani & Alex Furaha Charo (Suing for an on behalf od the Wamwanyundo Clan & 6 Others [2024] KECA 563 (KLR), RWW vs EKW (2019) eKLR, Absalom Dova vs Tarbo Transporters [2013] eKLR among others.**
9. The issue calling for determination is whether the Applicant has met the threshold for grant of the order of stay of execution sought.

10. No doubt the application herein was filed timeously, the judgment of the trial court was delivered on 11.12.2025 while the application was filed on 15.01.2026.
11. In respect to substantial loss, it is clear that for the Court to grant stay of execution, the Applicant needs to satisfy the Court that he will suffer substantial loss. In the case of **James Wangalwa & Another =Versus= Agnes Naliaka Cheset (2012) eKLR**, the Court observed that a party must demonstrate substantial loss this being a loss which is real or of value and that he must establish that execution will create a state of affairs that will irreparably affect or negate the very essential case of the Applicant as a successful party.
12. In applying the foregoing principles, the Applicant argues that the 1st Respondent has begun execution process which entails cancellation of his title and recovery of mesne profit of Ksh 500,000/- that was awarded together with his eviction from the suit parcel.
13. While it is trite law that execution is a lawful process, the court takes the position that the Applicant who is in possession of the suit parcel stands to suffer substantial

loss should the title be cancelled and he be evicted during the pendency of this appeal as the appeal will be rendered nugatory. This is a case for grant of stay of execution pending appeal.

14. In respect to security for costs, it is noteworthy that the same is paramount for the purposes of guaranteeing the due performance of the decree should the appeal not succeed. It is not aimed at punishing the judgment debtor as was held in the case of **Arun C. Sharma vs Ashana Raikundlia T/A Raikundalia & Co. Advocates & Others [2014] eKLR.**

15. The Applicant averred that in the judgment delivered by the Learned Magistrate, he was condemned to pay the sum of Ksh 500,000/- to the 1st Respondent as mense profits together with costs and interests.

16. In considering an order for deposit of the decretal sum, the court may direct the deposit of the entire decretal sum or set such figure that may be deemed to be reasonable in the circumstances. The court can also set out the timelines and manner of its compliance with a view

of curing any mischief that may be geared towards frustrating any compliance as directed by the Court.

17. The general principle of law is that the successful litigant in possession of a valid court judgement is entitled to the fruits of judgement unless there exist exceptional circumstances to deny him or her that right.

18. The Applicant is desirous of exercising it's right of Appeal. On the other hand, the 1st Respondent wishes to enjoy the fruits of his judgment.

19. In balancing the competing interests of both parties, the application dated 14th January 2026 is hereby determined in the following terms;

1) A stay of execution of the judgment of Hon. C. K. Kithinji (SPM) delivered on 11.12.2025 in Taveta ELC No. 1 of 2018 Mose Ole Leina =Versus= Muoki Mutua & Another is hereby granted pending the hearing and determination of the appeal filed herein on condition that the Applicant, Muoki Mutua do deposit a sum of Kshs. 250,000/= as security

for the due performance of the decree/order as may ultimately be binding on the Applicant.

- 2) The aforementioned sum of Kshs. 250,000/= shall be deposited within 30 days from today in a joint interest earning account in the names of the Advocates of the Applicant and the 1st Respondent.***
- 3) The parties shall within seven (7) days from today agree on the bank failure of which the Deputy Registrar of this court may be at liberty to nominate any reputable commercial bank for the parties.***
- 4) The Applicant is hereby directed to compile, file and serve the record of appeal within 30 days from today.***
- 5) In default of compliance with the condition in Order 1, 2 and 4 above, the stay of execution hereby granted shall automatically lapse and the 1st Respondent shall be at liberty to execute the decree without further reference to this Court.***

6) *Costs of this application to abide the outcome of the appeal.*

It is so ordered.

Dated, Signed and Delivered Virtually at Voi this 5th day of March, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of: -

Mr. Motuka for the Appellant.

Mr. Kilumo h/b for Ms. Indesia for the 1st

Respondent.

N/A for the 2nd and 3rd Respondents.

Court Assistant: Mary Ngoira.