



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCC E009 OF 2021

JULIUS NJUGUNA MWANGIAPPLICANT
VERSUS

KARIUKI KAMAU MBUKI1ST RESPONDENT
HANNAH WARIGIA MWANGI.....2ND RESPONDENT
WAMBUI MWANGI3RD RESPONDENT
SARAH WAMAITHA4TH RESPONDENT
THE LAND REGISTRAR, MURANG'A5TH RESPONDENT

RULING

(1) This ruling is on the notice of motion dated 10-11-2025. The motion which is by the Plaintiff is brought under **Sections 1A, 1B and 3A** of the **Civil Procedure Act, Orders 40 and 42** of the **Civil Procedure Rules** and all other enabling provisions of the law. It seeks two residual orders.

3. Stay of further proceedings and execution of the judgment delivered on 29-1-2025 pending the lodging, hearing and determination of the intended appeal.

4. That costs of the application do abide the outcome of the intended appeal.

(2) The motion is based on eight (8) grounds and is supported by an affidavit of the Applicant dated 10-11-2025. The gist of the grounds and the affidavit is as follows. Firstly, judgment in this matter was delivered on 29-1-2025 and on 14-2-2025, the Applicant filed a notice of appeal dated 10-2-2025. Secondly, on 21-3-2025, the Applicant’s advocate made an application to be supplied with certified copies of proceedings and judgment. Thirdly, in the month of September 2025, the Applicant was served with a prohibitory order restraining him from transferring or charging his land parcel No. Loc.20/Mirira/8660 for failure to pay costs of the suit that had been ordered against him. Then on 4-11-2025, the Applicant was served with a notice of settling the term of sale of the said land which was to come up for hearing on 12-11-2025. The Applicant has since filed an application to lodge the record of appeal out of

time at the Court of Appeal in Nyeri being COAAPPOL/E167/2025 which is pending hearing and determination. If the current motion is not allowed, the intended appeal will be rendered nugatory because the Applicant risks losing his home which is located on L.R. No. Loc. 20/Mirira/8660. For the above and other reasons, the Applicant prays for the two orders.

(3) The motion is opposed by the Respondent and their Counsel J.N Kirubi has sworn a replying affidavit dated 12-11-2025 in which he replies as follows. Firstly, the application as filed is misplaced, frivolous and an abuse of the Court process and ought to be dismissed with costs. Secondly, when the Applicant filed the lower court suit, he sought L.R. No. Loc.20/Mirira/4481 to revert to his father Mwangi Mura. The suit was dismissed. This dismissal was a negative order. It did not give the Respondents any occupation rights and it did not order the eviction of the Applicant. There is therefore nothing to be stayed. Finally, the only ongoing execution is for the taxed costs of Kshs. 349, 330/=.

For the above and other reasons, the motion should be dismissed.

(4) I have carefully considered the motion dated 10-11-2025 including the grounds, the two affidavits and the record. I find that the applicable provision of law is Order 42 rule 6(2) of the Civil Procedure Rules, this being an application for stay of execution pending appeal.

It provides as follows.

“(2) No order of stay of execution shall be made under subrule (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.”

(5) For an Applicant to succeed in an application such as this he must satisfy all the three conditions in **Order 42 rule 6(2)**. Failure to satisfy even one of the three conditions means that the application fails. The word ‘and’ is used after each of the three conditions. This means that the conditions are conjunctive and not disjunctive.

(6) In short for an Applicant to succeed in an application under **Order 42 rule 6(2) Civil Procedure Rules** that Applicant must prove,

- (a) That he stands to suffer substantial loss if the application is not allowed, and
- (b) That the application has been made without unreasonable delay and
- (c) Security for the due performance of such decree as may be binding on him has been given by the Applicant.

(7) Applying the above test in this case, I find that the Applicant has not proved that he stands to suffer substantial loss. In the suit in the lower court, the Applicant sought to nullify the registration of the 1st and 2nd Defendants as the proprietors of **L.R. No. Loc.20/Mirira/4481**. He failed in his quest. He retains his own land parcel No. **Loc.20/Mirira/8660** after having sold **L.R. No. 8659**. The two parcels mutated from L.R. No.4482 which the Applicant owned before he subdivided it. The Applicant is therefore not being moved from his land. It would have been different if he was being evicted from his land. Secondly, I find that the Applicant's motion fails the second condition because it was filed more than nine (9) months after judgment. A period of over nine (9) months is surely inordinate delay. Had it been made within the time allowed for appeal, that it would probably have met the second condition. The motion has failed the third condition because the affidavit is not saying that in the event his appeal to the Court of Appeal is dismissed, he will be able to meet the escalating costs that the Respondents will incur in opposing the appeal. It would seem that this application has been precipitated by the demand for costs made by the Respondents. In his supporting affidavit and grounds the Applicant has not stated that the Respondents will not be able to refund the taxed costs in the event that his appeal to the Court of Appeal is successful.

(8) The motion dated 10-11-2025 has failed to meet the three conditions for stay of execution in **Order 42 rule 6 (2) Civil Procedure Rules** and for this reason, I find that it has **no merit** and I **dismiss** it with costs.

Dated, signed and Delivered virtually at Murang'a this 2nd day of March 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Jackline
Applicant's Counsel – Mr Kariuki

