

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC APPEAL CASE No. E058 OF 2025**

DICKENS APPELLANT/APPLICANT	OTIENO	ONYANGO
VERSUS		
ELIZABETH RESPONDENT	OCHIENG	OWINYO 1ST
ISAAC RESPONDENT	ALUDA	SONGORE 2ND
ELDOLAND RESPONDENT	PROPERTIES	LIMITED 3RD

RULING:

1. Before court is the Appellant/Applicant's Notice of Motion Application dated 23rd October, 2025 seeking the following orders:-
 - (1) Spent
 - (2) This Honourable Court be and is hereby pleased to grant an interim ex parte order of stay of execution of orders issued on the 8th October, 2025 by Hon. Nancy Barasa pending the inter partes hearing and determination of this Application.
 - (3) Pending hearing and determination of the appeal herein the court be pleased to grant a permanent order of injunction restraining the Respondents, their agents, representatives and/or any other persons acting on their behalf from interfering with, alienating or otherwise altering the ownership and/or occupation of the suit property being PIONEER/LANGAS BLOCK 1/158.
 - (4) Pending hearing and determination of the appeal herein the Registrar of Lands be restrained from transferring further or

in any manner interfering with the current ownership of the suit parcel.

(5) The original title be surrendered and availed in court for safe custody until the suit is heard and determined.

(6) Pending hearing and determination of this Application and the Appeal, there be stay of proceedings in **ELDORET MCELC NO. E174 OF 2021 - ELIZABETH OCHIENG OWINYO -VERSUS- DICKENS OTIENO ONYANGO & 2 OTHERS**

(7) The costs of this Application be in the course.

2. The application is supported by the grounds on the face of the Motion and the Supporting affidavit sworn on 23rd October, 2025 by Barbara Ngome, the Appellant's Advocate on record. The Appellant's case is that he filed an application dated 22nd April, 2025 in Eldoret CM ELC No. 174 of 2021 seeking a stay of execution, which application was dismissed on 8th October, 2025 exposing the Applicant to the risk of execution to his detriment. Ms. Ngome deponed that there is also need to stay the proceedings of the lower court matter, which gave rise to this Appeal.
3. It was averred that the basis of the Appeal is that the trial magistrate erred in failing to uphold the legal parameters surrounding stay of execution pending hearing and determination of a suit in instances where there is a suit pending against the decree holder. That the Appellant is apprehensive that the Respondents will execute and realise the Court's orders at any time. That the structure constructed by the Applicant on a portion of the suit parcel has since been

destroyed and the current owner has constructed a perimeter wall.

4. Ms. Ngome also deponed that if the orders are not granted, the Respondents and the current occupant will proceed with the dealings on the suit property and the Appeal will be rendered nugatory. She averred that they were also seeking a stay of proceedings of the lower court matter pending hearing and determination of this appeal, and added that the Appellant has an arguable appeal with chances of success. Further, that the Appellant will be greatly prejudiced and stands to suffer a great loss if the orders are not granted. She claimed that the application had been made in good faith and that no party would be prejudiced if the application is granted as prayed.
5. The 1st Respondent opposed the application through her Replying Affidavit dated 11th November, 2025. She asked that the application be dismissed in limine for being fatally defective, raising no triable issues and inter alia being an abuse of court process. She deponed that the Appellant had not met the required threshold for grant of a stay of execution or proceedings. Further, that the order made on 8th October, 2025 is a negative order that only dismissed the application for lack of merit and is incapable of being stayed since there is no action to be acted upon by the Respondents.
6. She deponed that prior to the application dated 22nd April, 2025, the Appellant had earlier filed an application dated 14th September, 2021 seeking for orders of status quo and parties agreed that the status quo be maintained pending the hearing and determination of the main suit. She claimed that the present application offends Section 7 of the Civil Procedure Act

and is res judicata as the prayers sought are similar to those in the application of 22nd April, 2025. That the additional reliefs do not override the doctrine of res judicata. Further that the annexures to the application offend Rule 9 of the Oaths and Statutory Declarations Act.

7. The 2nd and 3rd Respondent jointly filed Grounds of Opposition dated 17th November, 2025 opposing the application on the following grounds:-

(1) THAT the applicant's application hereto is incompetent, fatally defective, amounts to abuse of the court process and the same is dead on arrival since orders of 8th October, 2025 that the applicant is seeking to stay are negative orders.

(2) THAT the applicant's instant application hereto is devoid of merit and should be dismissed with costs to the respondents.

(3) THAT the applicant's application does not meet the threshold for grant of stay orders pending appeal and should be dismissed in limine.

Submissions:

8. The court directed that the present application be canvassed by way of written submissions. The Appellant and the 1st Respondent complied and filed their submissions, with the Appellant's submissions dated 9th January, 2026 while the 1st Respondent filed her submissions dated 30th January, 2026.

The Appellant's Submissions;

9. Counsel for the Appellant explained that the Applicant sought to stay the orders releasing the land to the Respondents made vide a consent adopted as an order in the lower court. Counsel

cited Order 42 Rule 6 of the Civil Procedure Act as the law on stay of execution. Counsel submitted that the Appellant had satisfied all the requirements for grant of an order of stay of execution. Counsel asked that the injunctive order, preservation of the suit land and deposit of title equally be granted pending the hearing of this Appeal.

10. On the stay of proceedings, Counsel for the Appellant referred the court to the case of **Kenya Power & Lighting Company Limited vs Esther Wanjiru Wokabi (2014) KEHC 3174(KLR)**. Counsel submitted that the Appellant's claim in this appeal is that the lower court failed to uphold the legal parameters surrounding stay of execution of decrees pending hearing and determination of a suit where there is a suit pending against the decree holder. Counsel argued that this led to the court failing to reach a just judgment to the Appellant's detriment. Counsel stated that the Appellant is apprehensive that he is now exposed to eminent execution proceedings as the Respondents may at any time take steps to execute the court's order.
11. Counsel further submitted that the Appellant has an arguable appeal and has satisfied the principles for grant of an order of stay of proceedings until the appeal is heard. Counsel submitted that unless the proceedings are stayed, the matter will proceed to the Appellant's detriment, and that the Appeal will be rendered nugatory. In conclusion, Counsel asked that the prayers sought be granted to ensure the pending hearing of the main suit is determined in a just and fair manner.

The 1st Respondent's Submissions;

12. Counsel for the 1st Respondent first submitted on whether the application is res judicata and cited Section 7 of the Civil Procedure Act. Counsel referred the court to the Appellant's Application dated 22nd April, 2024 that sought similar reliefs as the present Motion, and which application was dismissed on 8th October, 2025. Counsel submitted that the parties are also the same and the court that determined the previous application had jurisdiction to entertain it. On this issue of res judicata, Counsel relied on **Kenya Commercial Bank vs Muiri Coffee Estate Ltd & Another (2016) eKLR, John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others (Petition 17 of 2015)(2021) KESC 39 (KLR)** and **Nairobi HCC 222 of 1999, Afab Establishments Ltd & Others vs Najmdin Ganijee & 2 Others.**
13. With regards to stay of execution, Counsel submitted that the decision of the trial court delivered on 8th October, 2025 dismissed the Appellant's Application dated 22nd April, 2025. That it is this order of dismissal that the Appellant wants to be stayed. Counsel submitted that the court cannot grant the order sought since the trial court did not order anything to be done and the costs awarded on dismissal have not been assessed. Counsel asserted that the order is a negative order which cannot be stayed. Counsel relied on **Hon. Peter Anyang Nyong'o & 2 Others vs The Minister for Finance & Another CAPPL No. 273 of 2007, Western College of Arts and Applied Sciences vs EP Oranga & 3 Others (1976) eKLR, Kenya Commercial Bank Ltd vs Tamarind Meadows**

Ltd & 7 Others (2016) eKLR and **Raymond M. Omboga vs Augustine Ryan Maranga Kisii HCCA No. 15 of 2010.**

14. On the stay of proceedings, Counsel submitted that the same interferes with a litigant's right to conduct litigation, the right to be heard without delays and the right to fair trial. Counsel cited the case of **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000**, and submitted that it is not in the interest of justice to stay the proceedings. Counsel submitted that the Appellant has not demonstrated that he will suffer any prejudice if the order of stay of proceedings is not granted. Counsel explained that what is pending for hearing in the lower court is the Appellant's Counter Claim and he will have his day in court to state his case. Counsel submitted that there is no justifiable cause to stay the proceedings, and that the Appellant had not met the threshold for the said order. Counsel submitted that the application ought to be dismissed.

Analysis and Determination:

15. I have considered the Application, the responses and the written Submissions filed by the parties as well as the authorities cited. The issues for determination are as follows:-
- i. Whether the Application is res judicata*
 - ii. Whether the Appellant has met the threshold for grant of an order of stay of execution pending appeal*
 - iii. Whether this Court should issue an order staying the lower court proceedings*
 - iv. Whether the Appellant has demonstrated that he is entitled to an order of permanent injunction.*

(a) Whether the Application is res judicata;

16. Section 7 of the Civil Procedure Act forms the basis for the law on res judicata and provides that:-

7. Res judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

17. In **Kenya Commercial Bank Ltd vs Benjoh Amalgamated Ltd (Civil Appeal 107 of 2010) (2017) KECA 98 (KLR)**, the Court of Appeal held that for a court to find that a suit or application offends the doctrine of res judicata, the following must be demonstrated:-

- (a) *The suit or issue was directly and substantially in issue in the former suit.*
- (b) *That former suit was between the same parties or parties under whom they or any of them claim.*
- (c) *Those parties were litigating under the same title.*
- (d) *The issue was heard and finally determined in the former suit.*
- (e) *The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.*

18. The Court of Appeal further held that the above elements of res judicata are conjunctive rather than disjunctive. As such, the

elements reproduced above must all be present before a suit or an issue is deemed res judicata on account of a former suit.

19. The Respondents claim that the present application is res judicata owing to the application filed in the lower court dated 22nd April, 2024. This Appeal having arisen from the lower court matter, there is no doubt that the parties therein are the same parties as in this appeal and/or are litigating under the same title. The lower court no doubt had the jurisdiction to entertain the matters that had been raised before it, and finally, there is a determination made by the said court.
20. The only element that needs further consideration is whether the issues in the previous application are the same as those directly or substantially in issue in this present application. A look at the application dated 22nd April, 2025 reveals that in that previous application, the Appellant herein sought the following orders:-
 - (i) That the Honourable Court be and is hereby pleased to grant an interim ex parte order of stay of execution of orders issued on the 20th March, 2025 by Hon. Nancy Barasa pending the inter partes hearing and determination of this application.
 - (ii) That pending the hearing and determination of the application herein the Court be pleased to grant a temporary order of injunction restraining the Respondents, their agents, representatives and/or any other person acting on their behalf from interfering with, alienating or otherwise altering the ownership and/or occupation of the suit property being PIONEER/LANGAS BLOCK 1/158.

(iii) That this Honourable Court be and is hereby pleased to set aside its orders issued on the 20th March, 2025 pending the hearing and determination of the entire suit.

(iv) That the Registrar of Lands be restrained from transferring or in any manner interfering with ownership of the suit parcel until the suit is heard and determined.

(v) The original title be surrendered and availed in court for safe custody until the suit is heard and determined.

(vi) The costs of this Application be in the course.

21. The said application was indeed determined through the Ruling of the lower court delivered on 8th October, 2025 which dismissed the application with costs to the Respondent. The court rendered itself on the order of stay as well as the prayer for depositing of the title and restraining order against the Land registrar. I note that the court does not seem to have expressly dealt with the prayer for a temporary injunction directly, however, it is a principle of the law that when a court does not explicitly grant a relief sought by a party it is deemed to have been denied or refused.

22. Therefore, if the Appellant was not satisfied with the decision of the trial court denying him the orders sought, he ought to have filed an appeal on the same, which is what he has done through this appeal. Indeed, the Memorandum of Appeal filed in this suit indicates clearly that it is an Appeal against the Ruling and Orders of the Chief Magistrate's Court at Eldoret delivered on the 8th October 2025 in Eldoret MCELC No. E174 of 2021.

23. I must point out however, that there are some differences in the two applications. The first is that the Appellant's prayer for stay

of execution in the previous application in the lower court was brought under Order 22 Rule 25 of the Civil Procedure Rules, which provides as follows:-

25. Stay of execution pending suit between decree-holder and judgment-debtor [Order 22, rule 25]

Where a suit is pending in any court against the holder of a decree of such court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

24. In contrast, the present application however is brought under Order 42 Rule 6 of the Civil Procedure Rules which deals with stay of execution pending appeal. Since the stay of execution is brought under a different legal provisions, it means that in essence it is a different relief and the considerations thereon are also different.
25. Another contrast is that in the previous application, the Appellant sought a temporary order of injunction, while the injunctive order sought in the present application is of the permanent kind.
26. Notably also, in the present application, the Appellant has sought an order of stay of proceedings which was not included in the previous application. Therefore, it is only these three reliefs in the present application that survive the axe brought down by the doctrine of res judicata. For this reason, the court will proceed to make a determination of these three issues.

(b) Whether the Appellant has met the threshold for grant of an order of stay of execution pending Appeal;

27. As indicated earlier, the present application is brought under Order 42 Rule 6 of the Civil Procedure Rules, which provides that:-

6. Stay in case of appeal [Order 42, rule 6]

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for 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.

28. However, at prayer (2) of the Application, the Appellant sought an interim ex parte order of stay of execution of the orders issued on 8th October, 2025 pending the inter partes hearing and determination of this application. I need not point out that the order as framed is clearly spent as it did not seek a stay of execution pending Appeal, and therefore it cannot issue.
29. However, even if this court were to assume that the order was for stay of execution pending the hearing and determination of this Appeal, the order of stay of execution would still not be tenable. The Appellant claims that he seeks to stay the finding of the trial court to the effect that there was no justified reason to interfere with the consent that had been adopted as an order of the court. With all due respect then, the Appellant should have sought a stay of execution of the orders issued through the consent order.
30. The Appellant however has been very specific in his present Application that what he seeks to stay are the orders made in the ruling delivered on 8th October, 2025. I have seen the ruling delivered by the trial magistrate on 8th October, 2025. Indeed, the trial court stated that that it found no justification to interfere with the consent which the Appellant herein was not a party to. However, the final outcome of that ruling was that the Application was found to lack merit and was dismissed with costs.
31. The court in its dismissal did not order the Respondents, or even the Appellant to do or refrain from doing any action. I must agree with the Respondents on the nature of the orders sought to be stayed, and more specifically, that it did not require any action to be taken by the Respondents. Where

there is no positive order made in favour of the respondents which is incapable of execution, there can be no stay of execution of such an order.

32. In the case of **Western College of Arts and Applied Sciences vs EP Oranga & 3 others (1976) KECA 15 (KLR)**, the Court of Appeal whilst considering whether an order of stay can be granted in respect of a negative order stated:-

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs... In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, it is so ordered.”

33. The appellant seeks to appeal against the order dismissing his application dated 22nd April, 2024. The order dismissing the Appellant’s application is in the nature of a negative order and is incapable of stay of execution, save perhaps, for costs. The refusal simply means that the Appellant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise.

(c) Whether this court order should issue an order staying the lower court proceedings;

34. Aside from the prayer for stay of execution, the Appellant also seeks an order of stay of the proceedings in the lower court. Order 42 Rule 6 is still the guiding law when it comes to stay of

proceedings, and from a reading of the said provision, the power to grant an order of stay of proceedings pending appeal is discretionary and not automatic.

35. It is generally agreed that a stay of proceedings is rarely granted unless the applicant demonstrates that the appeal is arguable and that, absent a stay, the appeal would be rendered nugatory. Ringera J (as he then was) in the case of **Global Tours & Travels Ltd Nairobi High Court Winding Up Cause No. 43 of 2000** had this to say on stay of proceedings:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factor as the need for expeditious disposal of cases, the prima facie merits of the intended appeal in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

36. Further, in **William Odhiambo Ramogi & 2 Others vs Attorney General & 3 Others (2019) eKLR**, the High Court itemised the following factors as relevant when determining an application for stay of proceedings pending appeal:-

“(a) First, there must be an appeal pending in the Higher Court.

b) Second, where the stay is sought in the court hearing the case as opposed to the higher Court to which the appeal has been filed and there is no express provision of the law allowing for such application, an applicant should explain why the stay has not been sought in the higher court. This is because due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of application for stay of proceedings being handled in the court to which an appeal is preferred because such a court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly.

c) Third, the applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable.

d) Fourth, the applicant must demonstrate that the appeal would be rendered nugatory if the stay of proceedings is not granted.

e) Fifth, the applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal and

f) Sixth, the applicant must demonstrate that the application for stay was filed expeditiously and without delay.

37. In this instance, there is indeed an Appeal pending in this court. At the core of this Appeal is the refusal of the trial court to allow the application dated 22nd April, 2024. One of the prayers in the said application was for setting aside the orders of the court made on 20th March, 2025. This court was not fortunate enough to have seen this consent order since the trial court file is yet to be availed. However, the trial magistrate noted in the impugned Ruling that the order sought to be set aside was one that adopted a consent between the Respondents.
38. This consent order allegedly resulted in the suit property being handed over to the Respondents while the suit was still pending. The Appellant however insists that he has a claim over the suit property and as confirmed in the impugned ruling, the Appellant had filed a counterclaim against the 1st Respondent herein, who is the Plaintiff in the lower court.
39. Since the Consent order was not availed and its terms are unknown, it is therefore not clear why the trial magistrate would adopt a consent that effectively handed over the property to the other two Respondents, without the Appellant herein being involved yet he is claiming the land.
40. It is worth noting that on numerous occasions, courts have held that an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court or one which is not frivolous.
41. One of the prayers in the Application of 22nd April, 2025 was for the trial court to set aside its orders issued on the 20th March, 2025 pending the hearing and determination of the entire suit. The Application of 22nd April, 2025 and its determination are

what gave rise to this present appeal. It is possible that this Appeal may be allowed, which would mean that the orders of 20th March, 2025 would effectively be set aside.

42. If this happens, it would mean that whatever compromise reached between the Respondents through the consent adopted on 20th March, 2025 is set aside, and the suit would have to proceed with all the parties defending their claim. It would not be in the interest of justice for the trial court to be left to proceed, and later on, this court allows the setting aside of the consent order as sought in this Appeal. Therefore, I do believe that the interests of justice would be better served if the said proceedings are stayed pending the hearing and determination of the instant Appeal.

(d) Whether the Appellant has demonstrated that he is entitled to an order of permanent injunction;

43. The principles upon which an injunction may be granted are stated in **Giella vs Cassman Brown Co. Ltd (1973) EA 358**, where it was held that an applicant must show:-

- a. A prima facie case with a probability of success.
- b. That unless an interlocutory injunction is granted, the applicant will suffer irreparable harm which would not adequately be compensated by an award of damages.
- c. That if the court is in doubt, it will decide an application on balance of convenience.

44. However, from the present application and submissions, the Appellant is seeking a permanent injunction restraining the Respondents from interfering with the ownership and occupation of the suit land. In **Kenya Power & Lighting**

Company Ltd v Habib (Civil Appeal 24 of 2016)
[2018] KEHC 5027 (KLR), the court had this to say about permanent injunctions:-

“... A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”

45. Under this issue, this court must determine whether an order of permanent injunction can issue on the basis of an interlocutory application. On this I refer to the decision of the High Court in **Jane Wambui Macharia v Wais Capital Limited & another** **[2015] KEHC 1890 (KLR)**, where the court held that:-

“[9] When a permanent injunction is sought at interlocutory stage, the Court has to carefully consider the facts of the case before it grants the relief because grant of such orders may determine the matter completely. Doubtless, an order for permanent injunction usually pre-empts the Defendants’ right to a trial, and the Court would therefore grant such reliefs at interlocutory stage only on exceptional circumstances. See Lansing Linde Ltd vs Kerr [1991] 1 WLR 251, that to obtain such relief, the claimant must show a ‘more than arguable case’ or ‘more than a merely serious issue to be tried’. But, the actual applicable test here should be the same as the one applicable in grant of mandatory injunctions at interlocutory stage as stated in Halsbury’s Laws of England (4th Edition) at para 948 that:-

‘A mandatory injunction can be granted on an interlocutory application as well as at the hearing,

but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied or if the defendant attempted to steal a march on the Plaintiff ... a mandatory injunction will be granted on an interlocutory application.'

[10] ... The court must be satisfied that the case is a clear one which the court thinks it ought to be decided at once without having to wait for trial. Also, if the act done is a simple and summary one which can be easily remedied or if the defendant attempted to steal a match on the Plaintiff, the court will grant a permanent injunction at interlocutory stage. But, a case is a clear or the act is simple one or the defendant merely wants to steal a match from the plaintiff will depend on the nature of the case and the circumstances of each case. I will apply the above test in this case."

46. A permanent/perpetual injunction generally cannot issue at the interlocutory stage because it requires a final determination of the suit. However, in rare, exceptional cases with special circumstances, such as when a case is clear and requires immediate action, courts may grant a permanent injunctive relief.
47. To be entitled to an order of permanent injunction at this interlocutory stage, the Appellant needed to demonstrate that the Appeal is a clear one which ought to be decided without waiting for a trial, that the act can be remedied or that the Respondents seek to steal a match on him. The Appellant did

not demonstrate any of the aforementioned circumstances to warrant the grant of the permanent injunction at this stage.

48. The main Appeal herein is one against the ruling of 8th October, 2025 where one of the prayers was for an injunctive relief. It is evident therefore that in bringing the present Motion, the Appellant seeks to have the Appeal determined at the interlocutory stage and through the back door. It could even be said in this case, that it is the Appellant who seeks to steal a match on the Respondents.
49. Moreover, the Appellant has not set out any exceptional or special circumstance that would justify the grant of a permanent injunction at this interlocutory stage. For the above reasons, I find that no justification has been given for the court to issue a permanent injunction before the parties are heard on appeal, or the matter before the trial court.

Orders:-

50. Consequently, the application dated 23rd October, 2025 partially succeeds and is determined as follows:-
- (a) Pending hearing and determination of this Appeal, there be stay of proceedings in **ELDORET MCELC NO. E174 OF 2021 - ELIZABETH OCHIENG OWINYO -VERSUS- DICKENS OTIENO ONYANGO & 2 OTHERS.**
- (b) Costs of this application shall abide the outcome of the Appeal.
51. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **5TH** day of **MARCH, 2026** vide Microsoft Teams.

HON. C. K. YANO

ELC, JUDGE

In the virtual presence of;

Ms. Ngome for Applicant.

Mr. Rotich holding brief for Mr. Mathai for 1st Respondent.

No appearance for 2nd and 3rd Respondents.

Court Assistant - Laban.

ORIGINAL