



**Rotich v Limo & 4 others (Environment and Land Appeal
E043 of 2025) [2026] KEELC 1273 (KLR) (4 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1273 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND APPEAL E043 OF 2025**

CK NZILI, J

MARCH 4, 2026

BETWEEN

JOSEPH KIPLIMO ROTICH PLAINTIFF

AND

PHILIP LIMO 1ST DEFENDANT

MARK LIMO 2ND DEFENDANT

PAUL SAMOEI 3RD DEFENDANT

STANLEY KIPKOSGEI 4TH DEFENDANT

KIRWA LIMO 5TH DEFENDANT

*(Being an appeal from the Ruling and Order of Hon. C.N. Njalale (PM)
delivered on 28/10/2025 in Kitale CM Court ELC No. E074 OF 2021)*

RULING

1. By an application dated 26/11/2025, the court is asked to stay execution of orders issued on 22/10/2025, directing the County Surveyor to survey Endebess/Kimondo Block 2(Mubere)/86 and all actions or steps to execute the ruling or orders therein, pending hearing and determination of this appeal. The grounds are set out on the application and a supporting affidavit of Joseph Kiplimo Rotich, sworn on 26/11/2025.
2. The applicant deposes that he is the registered owner of the suit land as per annexed title deed marked JKR-(1), whereof by an application dated 10/4/2025, he had sought for review, variation or setting aside of orders issued on 1/10/2024, directing survey of the suit land, in view of a ruling on status quo made on 6/7/2022 and marked as JKR-(2).



3. The applicant deposes that his application was dismissed on 28/10/2025 as per annexure marked JKR-(3), paving the way for the County Surveyor to undertake the survey and file a report within 30 days of the ruling. The applicant deposes that he has been occupying 6 acres of the suit land on the ground, and if the survey is done, he will lose 1 acre to the respondent.
4. Further, the applicant deposes that he is sickly and the respondents, who are his children, are taking advantage of his medical status to occupy his lawfully acquired land. He has attached the medical documents as annexure marked JKR-(4). The applicant urges the court to grant the orders sought; otherwise, his appeal will be rendered nugatory and suffer substantial loss after the survey permanently alters the boundaries to his detriment.
5. There appears to be no reply to the application from the respondents.
6. Stay of execution is a discretionary power exercised under Order 42 Rule 1 of the Civil Procedure Rules, where an application is brought without unreasonable delay, substantial loss is demonstrated, and lastly, security for the due realization of the decree should the appeal not succeed is offered.
7. The law has not set out what the minimum or maximum delay is. It all depends on the circumstances of each case. Substantial loss is the cornerstone of stay. It is what is to be prevented from happening. See *Halai & Another -vs- Thorton & Turpin* [1962] Ltd [1990] KLR 365.
8. In *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* [2012] eKLR, the court held that the substantial loss has to be established, to show that if it is allowed to happen, the very essential core of the applicant as the successful party in the appeal will be negated or affected. Tangible and cogent evidence has to be availed to substantiate substantial loss as held in *Kenya Shell Ltd -vs- Kibiru* [1986] KLR 410.
9. It is not enough to allege there will be substantial loss or damage. A party must demonstrate the same and justify why a successful party in a judgment should be denied enjoyment of the fruits of his judgment, which the interest of justice demands to be the case, as held in *Dodhia -vs- Wafula* [2025] eKLR.
10. The court balances the two competing rights or interests to ensure that no party suffers prejudice that cannot be compensated by way of costs, as held in *RWW -vs- EKW* [2019] eKLR.
11. The legal burden, therefore, remains with the applicant to show why the court should exercise its discretion in his favour. See *ABN Amro Bank N.V. -vs- Le Monde Foods Limited*, Civil Application No. NAI 15 of 2002.
12. The applicant must also show and meet the condition of security for due performance of the decree, as held in *Gianfranco Manenthi & another -vs- Africa Merchant Assurance Company Ltd* [2019] eKLR. Security must be one that will achieve the performance of the decree that might ultimately be binding on the applicant, as held in *Mwaura Karuga t/a Limit Enterprises -vs- Kenya Bus Services Ltd & 4 others* [2015] eKLR.
13. Regarding the stay of proceedings, it is a drastic step that interferes with the administration of justice. There must be exceptional circumstances why the court should do so, as held in *Global Tours & Travel Limited; Nairobi HC Winding Up Cause No.43 of 2000 and Kenya Wildlife Service -vs- James Mutembei* [2019] KEHC 10478 (KLR).
14. In this application, the orders sought to be stayed were issued in favour of the respondents, following an order of status quo pending hearing and determination of the lower court suit on 10/1/2022



15. The respondents contend that despite the status quo order, they have been denied access by the applicant by not showing them where they should use, work, or occupy.
16. The issues at the lower court for determination revolve around the doctrine of trust between close family members. The trial court opted, in the interim, to preserve the subject matter by allowing both the appellant and respondents to continue working or residing in their respective portions until the suit is heard and determined.
17. The order issued on 1/10/2024 is in furtherance of the establishment of the exact status quo where each of the protagonists occupies, uses, and or works for there to be harmony, peace, and coexistence. The letter dated 24/3/2025 was issued in furtherance of the court order. There is no indication that the County Surveyor's visit to verify the status quo would make final or permanent boundaries or subdivide the suit land to the detriment of either party, other than following what the trial court had directed as per its mandate.
18. In the ruling dated 28/10/2025, now the subject of the appeal, the trial court made a finding that there was no merit in the appellant's application for review or stay.
19. An arguable appeal need not succeed, but is one that raises a bona fide issue, requiring full consideration by the court on appeal. See *Gatirau Peter Munya -vs- Dickson Mwenda Kithinji & Others* [2014] eKLR.
20. Nugatory aspect concerns the question of whether what is sought to be stayed if allowed to happen is reversible, or if it is not reversible, whether damages will reasonably compensate the aggrieved party, as held in *Stanley Kangethe Kinyanjui -vs- Tony Keter & Others* [2013] eKLR.
21. The court has carefully looked at the ruling and the grounds of appeal. I think the applicant has not demonstrated substantial loss or damage through tangible and cogent evidence. The interest of justice in the circumstances requires the County Surveyor to visit the locus in quo, to establish the extent of the status quo.
22. Courts have held that status quo orders can be issued for purposes of preserving the subject matter. The Practice Directions No. 28 K of Gazette Notice 5178 of 2014 are clear. They give the court the leeway and the discretion to make an order of status quo until a suit is determined. Delaying the confirmation of the status quo would not be in the interest of justice. See *Mugah -vs- Kunga* [1988] [KLR] 748, *TSS Spinning & Weaving; Company Ltd -vs- Nic Bank Limited & another* [2020] eKLR and, *Kenya Airline Pilots Association (KALPA) -vs- Co-operative Bank of Kenya Limited & another* [2020] KEHC 1672 (KLR).
23. I think I have said enough to demonstrate that the application lacks merit. It is dismissed with costs.
24. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 4TH DAY OF MARCH 2026.

In the presence of:

Court Assistant – Dennis

Keya for the appellant present

Ongosi for the respondents present

HON. C.K. NZILI



JUDGE, ELC KITALE.

