

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. E033 OF 2022

ABRAHAM KIPKOSGEI CHELANGA
PLAINTIFF

-VERSUS-

SALOME WANJIRU KIGUMI **1ST**
DEFENDANT

HIGHRISE DESIGNERS COMPANY LIMITED **2ND**
DEFENDANT

BENSON KIMEMIA **3RD**
DEFENDANT

SILVIA WAMBUI **4TH**
DEFENDANT

RULING:

1. The 2nd defendant/Applicant herein filed a Notice of Motion Application dated 11th November, 2025, seeking the following orders: -
 - a) Spent.
 - b) Spent.
 - c) Pending the hearing and determination of the Appeal, the Honourable Court be pleased to grant order of stay of execution, staying the judgment and/or decree delivered on the 9th October, 2025 together with its consequential orders and effects.
 - d) Costs of this application be provided for.
2. The application is anchored on 7 grounds on the face thereof and supported by the affidavit sworn by one Francis B.S. Kariuki, one of the Directors of the 2nd defendant company.
3. He stated that being aggrieved by the judgment of this court issued on 09.10.2025, the 2nd defendant has since lodged an

appeal at the Court of Appeal, which appeal he maintains raises triable and fundamental issues for determination.

4. It is therefore his claim that the 2nd defendant stands to suffer substantial loss unless the orders of stay of execution are granted for the reason that its title will be revoked and consequently the plaintiff registered as the owner of 1 acre out of the entire suit land known as L.R. No. PIONEER/NGERIA BLOCK 1(EATEC)/1114.
5. It is further his claim that there will be no guarantee of how the plaintiff will deal with the land as a registered proprietor and there could be a possibility that the land may be alienated and which would in turn render the appeal nugatory in the event that the applicant is successful in the appeal.
6. It is his contention that the application has been filed timeously and without any unreasonable delay.
7. In conclusion, he deponed that the 2nd defendant/applicant is ready and willing to furnish security for the due performance of the decree as may be directed by the court. He further made an undertaking that the 2nd defendant promises not to sell any part of the suit land or deal with the land in any manner that will be adverse to the plaintiff's interest pending the hearing and determination of the appeal.
8. He thus urged the court to allow the application and grant the orders of stay of execution as sought.

9. The application was opposed. The Plaintiff/ Respondent filed a Replying Affidavit dated and sworn on 19th November, 2025. He dismissed the application as being fatally defective, incompetent and bad in law and should thus be dismissed with costs.
10. It was his claim that the applicant has not satisfied any of the requirements necessary for the grant of an order of stay of execution as outlined under Order 42 Rule 6 of the Civil Procedure Rules. That the applicant has neither proved the substantial loss that he is likely suffer If the order of stay sought is not granted nor offered any security as required by law.
11. He further deponed that the applicant has not demonstrated that the appeal before the Court of Appeal has any chances of success or raises any legal issue for determination.
12. It was also his assertion that the effect of granting the orders of stay of execution of the judgment of this court would amount to staying the distribution in Succession Cause No. 217 of 2003 whereas the applicant is not a party in the said cause.
13. He maintained that he has been in possession of the suit land from the time of purchase to date and thus urged the court to dismiss the application with costs.
14. The Application was canvassed by way of written submissions. The 2nd defendant/applicant filed their submissions dated 19.01.2026 while the plaintiff/respondent

filed his submissions dated 13.01.2026 together with authorities, which I have read and considered.

Analysis and Determination:

15. I have read and carefully considered the grounds in the present application, the supporting affidavit and the replying affidavit thereto as well as the applicant's submissions. Consequently, it is my considered opinion that the issues arising for determination are as follows: -
- i. *Whether an Order for Stay of Execution can issue against judgment issued on 9th October, 2025.*
 - ii. *Who shall bear the costs of the present application.*

Whether an Order for Stay of Execution can issue against judgment issued on 9th October, 2025;

16. It is settled law that no appeal shall operate as an automatic stay of execution. The purpose of an order of stay of execution is to preserve the substratum of appeal and ensure that the appeal is not rendered nugatory.
17. Order 42 Rule 6(2) of the Civil Procedure Rules, 2010 outlines the grounds governing the grant of an order for stay of execution and provides as follows: -

***(2) No order for stay of execution shall be made under sub- rule (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.

18. Thus, the three necessary requirements to be satisfied to warrant the grant of an order for stay of execution include;
- i. The Court is satisfied that substantial loss may result to the Applicant unless an order for stay of execution is ordered;
 - ii. The application is brought without undue delay and
 - iii. Security for costs as the court orders for the due performance of such decree or order is provided.
19. I will now proceed to determine each of the above requirements as hereunder.

Substantial Loss;

20. Substantial loss has been held to mean any loss, great or small, that is of real worth or value and not mere nominal loss. What amounts to substantial loss was expressed by the Court of Appeal in the case of **Mukuma vs Abuoga (1988) KLR 645** where their Lordships stated that;

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”

21. The 2nd defendant/applicant is therefore duty bound to demonstrate the loss it is likely to suffer if the order for stay

of execution sought is not granted. It has been held that it is not sufficient to merely state that substantial loss may be occasioned without demonstrating the same. (See **New Stanley Hotel Ltd -vs- Arcade Tobacconist (1980) KLR 757**).

22. The 2nd defendant/applicant avers that the effect of the judgment of issued on 09.10.2025 was to order the cancellation of the title in its name. They thus contend that unless the orders sought of stay of execution are granted, the plaintiff/respondent will be at liberty to transfer and/or alienate the remainder of the suit land and/or use the same as he pleases after excising the 1 acre portion in favor of the plaintiff since pursuant to the cancellation of the title the same will revert to the estate of Kimemia.
23. He further stated that unless the orders of stay sought are granted, the appeal may be rendered nugatory and in the event the appeal succeeds, the same would amount to an academic exercise.
24. The respondent on his part maintained that the applicant did not sufficiently demonstrate the substantial loss it is likely to suffer and submitted that mere financial burden occasioned by a judgment does not constitute substantial loss.
25. I have taken the rival arguments into consideration as well as the effect of the judgment of this court issued on 09.10.2025. It is not in dispute that this court in its judgment ordered the cancellation of the title deed issued to the 2nd

- defendant/applicant herein in respect to the suit land and the resultant subdivisions thereof and further that the suit land do revert to the estate of the deceased for distribution.
26. The effect of the said orders in my opinion is that unless orders for stay of execution are granted, the status quo before the registration of the suit land in the names of the 2nd defendant/applicant will be restored.
 27. Accordingly, the respondent would be at liberty to deal with the suit land as he pleases upon the cancellation of the title and the same reverting to the estate of the deceased.
 28. In view of the foregoing, contrary to the averments by the respondent that there was no demonstration of the substantial loss likely to be suffered, it is the finding of this court that the 2nd defendant/applicant has satisfactorily demonstrated the substantial loss it is likely to suffer to the required standard.

Unreasonable delay;

29. The second element is whether the present application was filed timeously and without undue delay. The judgment in question was delivered on the 9th October, 2025 while the present applications was filed on the 11th November, 2025. That is within 32 days from th date of the delivery of the judgment.
30. The applicant has deponed that the application was filed within the 30 days period. That the 30 days lapsed on a

weekend hence the filing of the application on 11.11.2025, which explanation I find reasonable in the circumstances.

31. Consequently, it is the finding of this court that there was no inordinate delay in filing the instant application and the same was filed timeously.

Security for Costs;

32. The final element is on the deposit of security for costs as the court may direct. The court in the case of **Arun C. Sharma Vs Ashana Raikundalia T/A Raikundalia & Co. Advocates and 2 others (2014) eKLR**, held that: -

“The purpose of the security under Order 42 is to guarantee due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor....civil process is quite different because in civil process the judgment is like a debt hence the applicant become and are judgment debtors in relation to the respondent. That is why any security given under order 42 rule 6 of the civil procedure rules acts as a security for the performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”

33. The 2nd defendant/applicant has expressed its willingness and readiness to deposit the security for costs as the court may direct. They further gave an undertaking to maintain the title deed in its state and undertook not to take any

action that would affect the interest of the plaintiff pending the hearing and determination of the appeal.

34. The respondent on his part argued that the applicant had not provided any security in court and did not therefore comply with the requirements under Order 42 Rule 6(2) of the Civil Procedure Rules.
35. In view of the foregoing, I will exercise my discretion in favour of 2nd defendant/applicant and allow the application for stay but on condition that they provide security as will be directed at the end of this ruling.
36. In view of the foregoing, I find that 2nd defendant/Applicant has satisfied the 3-limb test provided under the Civil Procedure Rules to warrant the grant of the order of stay of execution sought.
37. Consequently, I find that the Notice of Motion Applications dated 11th November, 2025 is merited and is hereby allowed on the following terms: -
 - a) An order for stay of execution be and is hereby issued staying the judgment and/or decree delivered on the 9th October, 2025 together with its consequential orders and effect, pending the hearing and determination of the appeal.
 - b) The 2nd Defendant/Applicant is hereby directed to deposit Kshs. 300,000/= in court as security for Costs for the due performance of the decree within 30 days from the date of this Ruling.

c) Failure by the applicants to comply with orders (b) hereinabove, Order (a) hereinabove shall automatically lapse.

d) Each party to bear their own costs of the Application.

38. It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 12TH day of MARCH, 2026.

**C. K. YANO
JUDGE**

Ruling delivered in the presence of: -

Mr. Mathai for the 2nd Defendant/Applicant

Mr. Mukhabane for the Plaintiff.

Mr. Oduor for 1st, 3rd & 4th Defendants.

Court Assistant - Laban