

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**  
**ELC NO. E011 OF 2022**

**MARY ANDEYO WANYONYI CHEBUKATI**  
**WANYONYI** **WAFULA**  
**CHEBUKATI-----PLAINTIFFS/RESPONDENTS**

**VERSUS**

**NEDDY** **E.M.** **AMBWAYAH-----**  
**DEFENDANT/APPLICANT**

**COUNTER CLAIM**

**NEDDY** **E.M.** **AMBWAYAH-----**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**MARY ANDEYO WANYONYI CHEBUKATI**  
**WANYONYI WAFULA CHEBUKATI-----**  
**DEFENDANTS**

**RULING**

**1.** The court, by an application dated **17/12/2025**, is asked to stay execution of a decree following judgment delivered on **1/12/2025**, in favour of the respondents pending hearing and determination of an intended appeal. The reasons are contained on the face of the application and in a supporting

affidavit sworn by Neddy E.M. Ambwayah on **17/12/2025**.

2. The applicant states that the judgment ordered her to open up the designated road shown on the survey map Folio No. **568/6**, serving parcels No. **8994/36** and **8994/37** South West Kitale, in default of which the respondents may do so at her cost.
3. The applicant says that since purchasing the two parcels of land from her late husband in **2014** and **2018**, the respondents have been accessing the parcels from the main Matunda-Sabata Road.
4. The applicant states that at the delivery of the judgment, a stay of **30** days was requested, due to expire on **23/1/2026**. The applicant states that the import of executing the judgment will result to an access road traversing part of her parcel of land No. **8994/5**, which she retained after the subdivision to create the respondents parcel of land, which has water springs and streams continuing directly to the Kabuyefu river, hence occasioning irreversible environmental degradation, pollution, soil erosion and permanent destruction of the said springs and streams, yet they are the sources of water for domestic and livestock purposes.
5. The applicant deposes that the existence of the said springs, streams, and swampy nature of the land

was also captured in the surveyor's report, which had proposed a re-routing, attached as **NEMA-5, 6, 7, 8, and 9**, respectively. The applicant deposes that the opening of the road will require excavation, grading, soil displacement, and clearing using heavy machinery, which will cause the environment to suffer substantial loss and damage, incapable of compensation by damages.

- 6.** The applicant deposes that during the hearing, the plaintiff alleged her none experiences flooding and she intended to use the road not just for access but to drain storm water into the river, which her own surveyor contradicted and said that an access road was not designed for drainage, for it has no discharge shoulders, unlike Matunda-Sabata, road which has trenches serving as such on both sides of the road.
- 7.** The applicant deposes that using the access road as a drainage would further direct storm water towards the natural springs and streams, hence not only contaminating them but also exposing her land to erosion and flooding.
- 8.** Further, the applicant deposes that execution of the decree as an order of the court will defeat the very environmental protection before the substratum of the intended appeal is heard and determined, which

has an equitable point as per the attached memorandum of appeal marked **NEMA-11**.

- 9.** The applicant deposes that the application is made timeously, it will not prejudice the respondents, for she has an alternative access road, it is important for the court not to compromise her rights to appeal, and that she has done all that is expected of her to fast-track the appeal as per annexures attached as **NEMA-2, 3, and 11**.
- 10.** The application is opposed through a replying affidavit sworn on **15/1/2026**.
- 11.** It is deposed that the judgment declared the right of the parties as to a public road as designated by the relevant authorities, which right cannot be stayed. The respondents depose that no security has been offered for the due realization of the decree.
- 12.** The application is also opposed for not disclosing or substantiating any substantial loss. The respondents depose that the public road as designated in the maps does not pass through the applicant's parcels of land and should therefore not be allowed to continue blocking its establishment, under the pretext that it passes through riparian land.
- 13.** The respondents depose that the applicant was given enough time to comply with the decree, which

she has not done, and thus has continued to inconvenience the respondents' right of use, access, and utilization of the public road.

- 14.** Stay of execution is a discretionary power donated by the court under **Order 42** of the Civil Procedure Rules. An applicant must meet the three conditions by filing the application without unreasonable delay, demonstrating substantial loss, and lastly, offering security for the due realization of the decree should the appeal not succeed.
- 15.** The law has not set the minimum or maximum delay. It all depends on the circumstances of each case.
- 16.** In **Kipkemoi -vs- Rono Civil Appl. No. E044 of 2025 [025] KECA 1185 [KLR] (4<sup>th</sup> July 2025)**, the court said that all that an applicant has to do is satisfactorily explain the delay to unlock the court's flow of discretion in his favour, as held in **Butt -vs- Rent Restriction Tribunal [19082] KLR 97**, **James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2013] Eklr, and Kenya Shell Ltd -vs- Karuga [1986] KLR 410**.
- 17.** Substantial loss has to be substantiated with tangible and cogent empirical documentary evidence. It is not enough to allege there will be

substantial loss or damage. See **Machira t/a Machira & Co. Advocates -vs- E.A. Standard No. 2(2002) 2 KLR 63.** In **Samvir Trustee Ltd -vs- Guardian Bank Ltd HCCC No. 795 of 1997,** the court observed that an applicant must satisfy the court that substantial loss would result if no stay is granted, and since the court has to weigh the two rights of the applicant who has an undisputed right of appeal, against that of a successful party, who has a right to enjoy the fruits of his judgment, which should not be impeded without justifiable cause.

**18.** In **Dodhia & Another -vs- Wafula [2-25] KECA 2172 [KLR] (10<sup>th</sup> December 2025) (Judgment),** the court said that it is also in the interest of justice that a successful party enjoys the fruits of his judgment. A pendency of an intended appeal or an application for stay does not amount to an automatic stay of execution.

**19.** The applicant herein alleges that there will be environmental damage if the decree is executed and that the respondents have an alternative right to access their parcels of land, other than the survey, WARMA, and Director of Surveys proposal. The applicant has not demonstrated that there is a definite finding by any body or by a court, declaring the said water springs, streams, and swampy area

as a wetland requiring protection of the court. Further, there is no evidence that the applicant has moved to the relevant Board under the Public Road and Board of Access Act to have the access road relocated, re-planned, and or rerouted from her alleged land for protection of the environment.

- 20.** The court has already found the applicant's counterclaim annexed. PW1 produced a report showing that the applicant had blocked a public road. The court was clear that no expert evidence was called on whether the subject springs or streams fell under riparian land, its extent or closeness to the road, and the nature of damage the road would pose to the alleged land, or how the access road would pose an environmental damage.
- 21.** The court made a finding that the applicant has no role, reasons, or basis to control what happens to the alleged riparian land, but the government agencies have. The court made a finding that the applicant had not established the extent of her rights over the alleged riparian land.
- 22.** Despite the foregoing findings of the court, the applicant uses the very same arguments that the court discounted as unscientific and meritless to advance an argument for substantial loss or damage. The applicant is relying on the very same

documents that the court found did not amount to expert evidence on riparian land, environmental damage or loss, or declaration of the applicant's threat to environmental rights or interests.

**23.** This court is alive to Principle **15** of the Rio Declaration, which is captured in **Section 3(5)** Environmental Management and Coordination Act, that lack of full scientific certainty should not be used as a reason for postponing cost-effective action to prevent environmental degradation. Further, the court is alive to the constitutional principle that the duty to protect the environment is not the sole preserve of the State, if there is failure on their part, individuals or persons of goodwill may embrace the initiative as held in **EPZ of Kenya & Others -vs- The NEMA & Others SCOK Petition No E021 of 2023 [2024] KESC 75 [KLR] ( 6<sup>th</sup> December 2025)**.

**24.** In this application, the court is not convinced that, other than alleging an intended or threatened or imminent breach of the constitutional right to a clean and healthy environment, the applicant has substantiated the same at the individual level. Substantial loss or damage must be real, imminent, and apparent; apprehension or speculation may not suffice.

**25.** For close to **10** years, since the applicant became aware of the existence of the access road, instead of making appeals or moving the relevant bodies to relocate, re-plan, or reroute the access road, she took the law into her own hands and blocked a road of access, which is a criminal offence under the Traffic Act. The rights of access to roads are public goods based on non-excludability and non-rivalry in access. The respondents and other road users have a right to access those public goods and services.

**26.** In **Base Titanium Ltd -vs- County Government of Mombasa & Another Petition No. 22 of 2018**, the court defined services as something or a system that provides something that the public needs, which includes public transport. The court said that under **Section 22**, the Kenya Board Act, and the Traffic Act, Kenya National Highways Authority, Kenya Urban Roads Authority, and Kenya Rural Roads Authority are established to construct, upgrade, rehabilitate, maintain, control, and implement policies relating to national, rural, and urban roads.

**27.** The court said that the mandate of the Kenya Roads Board is to oversee the road network in Kenya and coordinate its maintenance, rehabilitation, and development, and following which Legal Notice **No.**

**2 of 2016** has classified the road network management system in Kenya Classes **S, A & b, C, D, E, F, K, L, P, R, S, T, U, W**. Blocking an access road offends **Section 62** of the Kenya Roads Act.

**28.** The inconvenience and prejudice to the respondents are real and outweigh any inconvenience, if any, to the applicant. Substantial loss is not just ordinary loss; what the applicant is alleging, as opposed to the respondents, is not personal loss at all. The court found no substantial loss demonstrated.

**29.** Coming to security, the applicant must show and meet the security conditions. In **Gianfranco Manenti & another -vs- Amaco Assurance Company Ltd [2014] eKLR**, the court held that the intention was not to deny the applicant the right of appeal, but to ensure there is adequate security ultimately binding on the applicant as a debtor to the decree, should his appeal not succeed.

**30.** In **Nduhiu Gitahi -vs- Warugongo [1998] KLR 621**, the court held that security is aimed at protecting the respondent and could take the form of a bank guarantee or title. In this matter, no security has been offered by the applicant as a condition preferred.

**31.** Lastly, nugatory means being rendered worthless or useless. The applicant has not substantiated the

same. It is not for this court to determine the arguability of the intended appeal. How the appeal will be rendered nugatory has not been proved.

**32.** The upshot is that I find the application lacking merit. It is dismissed with costs.

**33.** Orders accordingly.

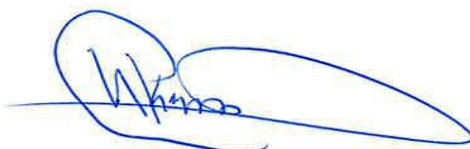
**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **11<sup>th</sup>** day of **March 2026**.

**In the presence of:**

Court Assistant - Dennis

Takar for Mutumbia for the plaintiff present

Mango for the defendant present



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**