



Chitelesi v Mukhonje (Suing as the Administrator of the Estate of Thomas Mukhonje) & 2 others (Environment and Land Appeal E003 of 2023) [2026] KEELC 1128 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1128 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E003 OF 2023
A NYUKURI, J
FEBRUARY 26, 2026**

BETWEEN

PHILIP MULUPI CHITELESI APPELLANT

AND

TIMOTH LUCHELI MUKHONJE (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THOMAS MUKHONJE) 1ST RESPONDENT

THE LAND REGISTRAR KAKAMEGA COUNTY 2ND RESPONDENT

THE DISTRICT LAND SURVEYOR 3RD RESPONDENT

RULING

1. Before court is an application dated 25th July 2025 filed by the appellant/applicant seeking orders that
 - a. Spent
 - b. That the applicant be granted leave to act in person after judgment
 - c. Spent
 - d. That pending the hearing and determination of the intended appeal an order of stay do issue restraining the Land Registrar from cancelling the registration of land parcels Nos N. Kabras/ Bushu/ 2717, 2718, 2719 and 2720 being subdivisions of land parcel No S. Kabras/Bushu/164 as decreed in Butali Senior Principal Magistrates Court ELC NO. 29 of 2019 and upheld by this court on 14/07/2025.
 - e. That costs be in the intended appeal
2. The application is anchored on the supporting affidavit sworn by the applicant on 25th July 2025. The applicant's case is that he is the registered owner of parcel No. S. Kabras/Bushu/2718 and 2720. That



this court's judgment affirmed the lower court judgment and that the applicant intends to appeal to the Court of Appeal. Further that he has filed notice of appeal.

3. He maintained that in view of the orders of this court, the Land Registrar may go ahead and cancel the applicant's registration. That the intended appeal is not frivolous. That the respondent does not stand to suffer prejudice but the applicant shall suffer substantial loss. That he needs leave to act in person.
4. The application was opposed. The 1st respondent filed a replying affidavit dated 24th February 2026. He stated that the application was bad in law, frivolous, without merit and a waste of court's time. That no notice of appeal has been filed in respect of the judgment herein. That the applicant has not demonstrated that he will suffer substantial loss. That the applicant has failed to demonstrate that the intended appeal has reasonable chances of success. That being a successful litigant in this court, he is entitled to enjoy fruits of the judgment and that the application is meant to frustrate the execution process.
5. Parties were directed to file submissions in support of their respective positions. On record are submissions filed by the respondent dated 24th February 2026 which the court has duly considered.

Analysis and determination

6. The court has carefully considered the application, response thereto and submissions. The issue that arise for determination is whether the applicant deserves the orders sought. In the instant application, the applicant sought leave to act in person. Order 9 rule 9 of the Civil Procedure Rules requires a party who intends to act in person having previously been represented by an advocate up to after judgment, to seek leave of court to act in person. Representation is a constitutional right and a party has a right to either represent themselves or be represented by counsel of their choice. In this case there is no impediment for the applicant to represent himself and therefore the prayer for leave to act in person is allowed.
7. The applicant herein sought orders of "stay restraining the Land Registrar from cancelling the registration of land parcels Nos N. Kabras/Bushu/ 2717, 2718, 2719 and 2720." That prayer as couched, is not clear whether the applicant is seeking stay of execution of the judgment herein or orders in the nature of a temporary injunction.
8. This court has jurisdiction to grant stay of execution pending appeal. Order 42 Rule 6 of the Civil Procedure Rules provides for the jurisdiction of the court to grant orders of stay of execution pending appeal thus;

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



(1)	<p>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.</p>				
(2)	<p>No order for stay of execution shall be made under subrule (1) unless—</p> <table border="1" data-bbox="1043 837 1386 1986"> <tr> <td data-bbox="1043 837 1129 1518">(a)</td> <td data-bbox="1129 837 1302 1518"> <p>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</p> </td> </tr> <tr> <td data-bbox="1043 1518 1216 1986">(b)</td> <td data-bbox="1216 1518 1386 1986"> <p>such security as the court orders for the due performance of such decree or order as may ultimately be binding</p> </td> </tr> </table>	(a)	<p>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</p>	(b)	<p>such security as the court orders for the due performance of such decree or order as may ultimately be binding</p>
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		on him has been given by the applicant.
	(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.

9. Therefore, to obtain stay of execution pending appeal, an applicant ought to demonstrate that they stand to suffer substantial loss; that they have sought stay without unreasonable delay and show willingness to provide security for the due performance of the decree that may issue against them.



10. In *Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd* (in liquidation) [2004] 2 EA 331 the court stated as follows;

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.”

11. On whether or not the applicant is entitled to an order of stay of execution pending appeal, it is clear that in the judgment of this court delivered on 14th July 2025, the court dismissed the appeal with costs. A dismissal is a negative order and therefore incapable of being stayed. Thus, a stay of execution cannot issue in this matter.

12. Regarding temporary injunction, this court has no jurisdiction to grant temporary injunction pending appeal to the Court of Appeal as this court heard and determined the appeal on merit and already pronounced itself on the rights of the parties. Therefore, the court declines to grant temporary injunction.

13. The upshot is that save that the appellant herein is hereby granted leave to act in person in this matter, the application dated 25th July 2025 lacks merit and the same is hereby dismissed with costs to the 1st respondent.

14. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 26TH DAY OF FEBRUARY, 2026 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Siro holding brief for Mr. Getanda for the 1st respondent

No appearance for the appellant

No appearance for the 2nd and 3rd respondents

Court Assistant: Delphine

