

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC NO. E034 OF 2024**

**MENZA KASENA .....**  
**PLAINTIFF**

**VERSUS**

**MUMBA KATSOLE & 3 OTHERS.....**  
**.....DEFENDANTS**

**RULING**

**The Application**

1. The Notice of Motion dated **1<sup>st</sup> October 2025** seeks that this court do grant a stay of execution of the order emanating from the decision it made in its judgment on 22<sup>nd</sup> September 2025 in the present suit, pending the hearing and determination of the intended appeal in the Court of Appeal. It is supported by the sworn affidavit of Mumba Katsole also dated 1<sup>st</sup> October 2025.
2. The grounds upon which it is made are that the applicants are aggrieved by the judgment and they wish to appeal against it, mainly on the ground that the issue of trust never arose before this court in the first instance and that the respondents were condemned unheard on the same in the judgment.

**The Response.**

3. The application is opposed. The respondent file his replying affidavit dated 9<sup>th</sup> October 2025. It is stated that it is not true that he may execute the judgment at any time as alleged, and that no process of execution has been commenced at all, and that the application does not meet the conditions required for stay of

execution orders pending appeal. It is also contended that the application is only a delaying tactic to frustrate enforcement of the court's judgment, but the applicants will not suffer any irreparable or substantial loss since the suit land was purchased by Mumba the respondent's grandfather using dowry paid for Nyevu, daughter of Menza; that the applicants do not live on the suit land but on their own ancestral land at Mihingoni, where their grandfather Mumba lived before his death, whereas the appellant is the one who is living on the land and has developed it for more than fifty years.

**Analysis And Determination.**

4. I have considered the application before me. I find that the applicants filed a Notice of Appeal dated 29<sup>th</sup> September 2025 and therefore, for the purposes of Order 42 rule 6 of the Civil Procedure Rules and of the present application, there is an appeal in existence.
5. Regarding irreparable loss, I find that the applicants are not in occupation of the suit land and neither have they have effected any developments thereon like the respondent has. Consequently, on that ground, I do not find that the applicants stand to suffer any irreparable loss, or that the appeal would be rendered nugatory if the order of stay does not issue.
6. The upshot of the foregoing is that the application dated 1<sup>st</sup> October 2025 does not meet the threshold of an application for

stay of execution and thus lacks merit, and it is hereby dismissed with costs to the respondent.

**Dated, signed and delivered at Malindi this 26<sup>th</sup> day of February, 2025.**



**MWANGI NJOROGE  
JUDGE, ELC, MALINDI**