



**Mwadime v Warunge & another (Environment and Land Appeal E022 of 2025)
[2026] KEELC 1193 (KLR) (Environment and Land) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1193 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E022 OF 2025
EK WABWOTO, J
FEBRUARY 26, 2026**

BETWEEN

NAOMI MWADIME APPELLANT

AND

ROBERT NJENGA WARUNGE 1ST RESPONDENT

ROBERT MGHANDE MZAMIWA 2ND RESPONDENT

RULING

1. A party seeking a stay of execution has to apply without unreasonable delay, demonstrate substantial loss to be suffered and offer security for due realization of the decree should the appeal not succeed. The said requirements are clearly outlined under Order 42, Rule 6 (2) of the Civil Procedure Rules 2010.
2. The Applicant has sought for stay through her application dated 25th November 2025, which application is premised on the grounds on its face and the supporting affidavit sworn by the Applicant on even date. She avers that the Learned Magistrate Hon. C. K. Kithinji SPM delivered her judgment on 6th November 2025 in favour of the Respondent. The judgment inter alia condemned her pay a contractual balance of Kshs. 100,000/= together with costs and interest. She also avers that she was granted 30 days stay which if lapses execution may proceed. She further averred that being aggrieved by the said judgment she has filed the instant appeal.
3. The application was opposed by the Respondents vide a Replying Affidavit sworn on 2nd December 2025. It was averred that the Applicant has not demonstrated any threat of execution and if the court is inclined to allow the application then the Applicant should be ordered to deposit the decretal sum to court as security before the appeal is heard and determined.



4. The application was canvassed by way of written submissions. The Applicant filed written submissions dated 2nd February 2026 while the Respondents filed written submissions dated 9th February 2026 which submissions the court has duly considered.
5. The issue calling for determination is whether the Applicant has met the threshold for grant of the order of stay of execution sought.
6. No doubt the application herein was filed timeously, the judgment of the trial court was delivered on 6th November 2025 while the application was filed on 26th November 2025.
7. In expounding further on the requirements set out under Order 42, Rule 6(2) of the Civil Procedure Code, 2010, this court makes reference to the case of James Wangalwa & Another =Versus= Agnes Naliaka Cheset (2012) eKLR, where the Court observed that a party must demonstrate substantial loss this being a loss which is real or of value and that he must establish that execution will create a state of affairs that will irreparably affect or negate the very essential case of the Applicant as a successful party.
8. In applying the foregoing principles, the Applicant has not demonstrated any substantial loss and further there is no eminent threat of execution that has been commenced by the Respondent. However, considering that the Respondents has averred that they have no issue with the Court directing the deposit of the decretal sum as security then this Court in balancing the interest of both parties is inclined to direct as such.
9. The Applicant averred that in the judgment delivered by the Learned Magistrate, she was condemned to pay the sum of Ksh 100,000/- to the Respondents as contractual balance together with costs and interests.
10. In considering an order for deposit of the decretal sum, the court may direct the deposit of the entire decretal sum or set such figure that may be deemed to be reasonable in the circumstances. The court can also set out the timelines and manner of its compliance with a view of curing any mischief that may be geared towards frustrating any compliance as directed by the Court.
11. The upshot is that the application dated 21st November 2025 is hereby determined as follows: -
 1. A stay of execution of the judgment of Hon. C. K. Kithinji (SPM) delivered on 6th November 2025 in Taveta ELC E010 of 2020 Naomi Mwadime =Versus= Robert Njenga Warunge & Another is hereby granted pending the hearing and determination of the appeal filed herein on condition that the Applicant, Naomi Mwadime do deposit a sum of Kshs. 50,000/= as security for the due performance of the decree/order as may ultimately be binding on the Applicant.
 2. The aforementioned sum of Kshs. 50,000/= shall be deposited within 30 days from today in a joint interest earning account in the names of the Advocates of the Applicant and the Respondents.
 3. The parties shall within seven (7) days from today agree on the bank failure of which the Deputy Registrar of this court may be at liberty to nominate any reputable commercial bank for the parties.
 4. In default of compliance with the condition in Order 1 and 2 above, the stay of execution hereby granted shall automatically lapse and the Respondents shall be at liberty to execute the decree without further reference to this Court.
 5. Costs of this application to abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 26TH DAY OF FEBRUARY, 2026.



E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Motuka for the Appellant.

Mr. Mwzighe for the Respondents.

Court Assistant: Mary Ngoira.

