

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT ELDORET**  
**ELC APPEAL NO. E019 OF 2023**

**MICHAEL L. KIPKEU.....1<sup>ST</sup> APPELLANT/RESPONDENT**

**WILLIAM K. KIPTUIYEI.....2<sup>ND</sup>**

**APPELLANT/RESPONDENT**

***-VERSUS-***

**KIPKENER**

**BIRGEN.....**

**RESPONDENT/APPLICANT**

**R U L I N G**

1. The Respondent (hereinafter referred to as **“the Applicant”**) did file a Notice of Motion Application dated 08.10.2025 (hereinafter referred to as **“the present Application”**) seeking the following Orders against the 1<sup>st</sup> and 2<sup>nd</sup> Appellants (hereinafter referred to as **“the 1<sup>st</sup> and 2<sup>nd</sup> Respondents”**);

**a. THAT this Application herein be certified urgent and service of the same be dispensed with in the first instance. (SPENT)**

**b. THAT this Honourable Court be pleased to Order Stay of execution of the Judgement given on the 18.09.2025 and attendant Orders/directions arising therefrom pending the hearing and determination of this Application inter-partes. (SPENT)**

**c. THAT this Honourable Court be pleased to Order Stay of Execution of the Judgement given on the**

**08.09.2025 and attendant Orders/directions arising therefrom pending the hearing and determination of the Intended Appeal to the Court of Appeal.**

**d. THAT the costs of this Application be provided for.**

2. The grounds in support of the prayers above are outlined in the body of the present Application as well as the Supporting Affidavit thereof and can be summarised as follows; -
  - i) The Applicant herein is aggrieved by the Judgement pronounced by this Court on the 08.09.2025.
  - ii) The Applicant intends to Appeal against the Judgement pronounced by this Court on the 08.09.2025 to the Court of Appeal and has filed a Notice of Appeal dated 18.09.2025 to that effect.
  - iii) The Applicant states that in the Judgement pronounced on the 08.09.2025, an Eviction Order was issued against him over the property known as MEIBEKI/MEIBEKI BLOCK 8 (MAWE)/24 (hereinafter referred to as **“the suit property”**)
  - iv) Based on the above Eviction Order, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have threatened to execute the said Eviction Orders before the intended Appeal is heard and determined.
  - v) If the Eviction Order issued on the 08.09.2025 in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent is executed, then the Applicant stands to suffer irreparable loss and he will be rendered a destitute and homeless.
  - vi) According to the Applicant, if the Judgement pronounced on the 08.09.2025 is executed by the 1<sup>st</sup> and 2<sup>nd</sup>

Respondents, then the intended Appeal before the Court of Appeal will be rendered nugatory.

- vii) The Applicant was of the view that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents would not suffer any prejudice if the Orders sought herein are granted by this Court.
  - viii) Lastly, the Applicant did plead that the present Application had been filed without any delay and was in the interest of justice.
3. The present Application was duly served on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein.
  4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did oppose the present Application through a Replying Affidavit dated 15.10.2025.
  5. In the Replying Affidavit dated 15.10.2025, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did plead the following facts in opposition of the present Application; -
    - i) First and foremost, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did plead that the present Application was not urgent as the suit property did belong to them and not the Applicant.
    - ii) Secondly, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did plead that the Applicant had failed to demonstrate any substantial loss being occasioned by the Orders made in the Judgement pronounced on 18.09.2025.
    - iii) Thirdly, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did state that the Applicant had failed to provide any security for costs which is a pre-condition for the granting of an Order of Stay pending Appeal.

- iv) Fourthly, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did further plead that the Applicant had failed to comply with the provisions of Order 42 Rule 6 (4) and (5) of the Civil Procedure Rules, 2010.
  - v) In essence, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sought this Court to dismiss the present Application.
6. The Replying Affidavit sworn on the 15.10.2025 was duly served on the 1<sup>st</sup> Applicant herein.
7. The Applicant did file a Further Affidavit dated 18.11.2025 in response to the Replying Affidavit dated 15.10.2025.
8. In the Further Affidavit dated 18.11.2025, the Applicant did plead the following facts; -
- i) The Applicant did state that the Judgement pronounced on the 18.09.2025 did provide that the Eviction Order would mature within 30 days thereafter.
  - ii) The Applicant did plead that the period of 30 days provided in the Judgement pronounced on the 18.09.2025 to vacate the suit property was too short.
  - iii) The Applicant did believe that the normal practice was an Eviction Order would mature 90 days after the Judgement has been issued.
  - iv) The Applicant did express its difficulty to comply with the Judgement pronounced on the 18.09.2025 within 30 days and sought the Court to extend the same to a period of 90 days.

- v) The Applicant did state that the Trial Court Judgement was the correct determination and therefore the intended Appeal had a high chance of success before the Court of Appeal.
9. On the 11.11.2025, the Court did direct that the present Application be canvassed by way of written submissions.
10. The Applicant did file his submissions dated 20.11.2025 while the Respondents did file their submissions dated 26.11.2025.
11. The Court has indeed perused the present Application, all the Affidavits therein as well as the submissions by the parties and identifies the issues for determination as follows; -

**ISSUE NO.1 - HAS THE APPLICANT SATISFIED THE GROUNDS UPON WHICH AN ORDER OF STAY PENDING APPEAL CAN BE ISSUED?**

**ISSUE NO.2- IS THE PRESENT APPLICATION MERITED?**

**ISSUE NO.3- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?**

12. The Court having duly identified the above-mentioned issues for determination, the same will be discussed as provided hereinbelow.

**ISSUE NO.1 - HAS THE APPLICANT SATISFIED THE GROUNDS UPON WHICH AN ORDER OF STAY PENDING APPEAL CAN BE ISSUED?**

13. The first issue for determination is whether or not the Applicant has satisfied the grounds upon which a Court can exercise its discretionary powers in granting an Order of Stay pending Appeal.
14. The present Application is premised on the provisions of Order 42 Rule 6 and 7 of the Civil Procedure Rules, 2010.
15. Under Order 42 Rule 6 and 7 of the Civil Procedure Rules, 2010, the grounds upon which an Applicant must satisfy the Court to be merited for an Order of Stay pending Appeal are provided under Order 42 Rule 6 (2) (a) and (b).
16. The provisions of Order 42 Rule 6 (2) (a) and (b) state 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.***

***b) Such security as the Court Orders for the due performance of such Decree or Order as may be ultimately be binding on him has been given by the Applicant.”***

17. Based on the above proviso, there are three substantive grounds upon which the Applicant must satisfy to be granted an Order of Stay pending Appeal which are as follows; -

**a) Whether or not the Applicant will suffer substantial loss if the Order of Stay pending appeal is not granted?**

**b) Whether or not the Applicant has offered any security for costs?**

**c) Whether or not the Application for stay of execution has been filed within reasonable time?**

18. Using the above grounds, the Court will now proceed to evaluate each and every ground with a view of deciding on whether or not the Applicant has satisfied the Issue No.1 hereinabove.

**a) Whether or not the Applicant will suffer substantial loss if the Order of Stay pending appeal is not granted?**

19. The first ground of evaluation is whether or not the Applicant stands to suffer any substantial loss if the Order of stay pending Appeal is not granted.

20. The Applicant did plead that the Judgement pronounced on the 18.09.2025 included an Order of Eviction over the suit property herein.

21. The Applicant was of the view that the implementation of the Eviction Order contained in the Judgement pronounced on the 18.09.2025 was that their developments including his homes would be demolished.

22. As a result thereof, the Applicant herein stood to suffer irreparable loss and become a destitute for lack of a decent home.

23. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein did oppose the above facts pleaded by the Applicant.
24. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did plead that the Applicant never demonstrated any form of loss that would be occasioned by the Orders issued in the Judgement dated 18.09.2025.
25. It is true that in the Judgement pronounced on the 18.09.2025, the Court did Order the Applicant herein to yield vacate possession of the suit property within 30 days from the date of the Judgement.
26. In the event of failure to yield possession, an Eviction Order was to issue upon lapse of the 30 days period and the Deputy Registrar of the Environment and Land Court Eldoret was to execute the same.
27. The Court has duly perused the Judgement pronounced on the 18.09.2025 and in Issue No. 4 therein, it was admitted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the Applicant was in occupation of the suit property herein.
28. The Order to yield vacant possession and in default the Order of Eviction thereof is one if implemented would mean that the Applicants developments on the suit property would be demolished and/or removed.
29. The exercise of demolition and removal of Applicant's developments from the suit property would definitely result to substantive loss to the Applicant herein.
30. In essence, this Court is of the considered view and finding that the Applicant stands to suffer substantial loss based on the Eviction Orders issued on the 18.09.2025 if the Stay of Execution Orders sought herein are not granted.

**b) Whether or not the Applicant has offered any security for costs?**

31. The second issue for determination is whether or not the Applicant has provided for security of costs.
32. In the present Application, the Applicant did not plead or give any form of security for costs as required by law.
33. In fact, the Applicant did not plead its willingness to abide by any Orders on costs issued by this Court.
34. Be as it may, this Court is of the view that security for costs is a pre-condition of granting any Orders of Stay of execution pending Appeal.
35. As such, looking at the time and effort spent in the prosecution of this file before the Trial Court and the first Appeal before this Court, a sum of Kenya Shillings Seven Hundred Thousand (KShs 700,000/-) would be sufficient as security for costs.

**c) Whether or not the Application for stay of execution has been filed within reasonable time?**

36. The last ground for consideration is whether or not the present Application was filed within a reasonable time.
37. To answer this question, the Judgement which the Applicant intends to Appeal was pronounced on the 18.09.2025.
38. The present Application was then filed on the 08.10.2025.

39. The period between when the Judgement was pronounced and the date the present Application was filed is less than 30 days.
40. As such, this Court is satisfied that the present Application was filed within a reasonable time and without undue delay.

### **ISSUE NO.2- IS THE PRESENT APPLICATION MERITED?**

41. Based on the findings on the various grounds contained in Issue No.1, this Court of the view and finding that the present Application is merited.

### **ISSUE NO.3- WHO BEARS THE COSTS OF THE PRESENT APPLICATION?**

42. Costs are awarded to a winning party.
43. However, in view of the fact that the Applicant herein intends to file an Appeal, then the costs of the present Application will abide the outcome of the main Appeal.

### **CONCLUSION**

44. In conclusion, the present Application is hereby determined on the following Orders; -

**A.THE NOTICE OF MOTION APPLICATION DATED 08.10.2025 IS MERITED.**

**B.AN ORDER OF STAY OF EXECUTION RELATING TO ORDER 5 & 6 OF THE JUDGEMENT PRONOUNCED ON**

**THE 18.09.2025 AND THE SUBSEQUENT DECREE ISSUED THEREOF BE AND ARE HEREBY STAYED PENDING THE HEARING AND DETERMINATION OF THE INTENDED APPEAL BY THE APPLICANT HEREIN.**

**C. THE APPLICANT WHO IS THE RESPONDENT IN THIS APPEAL AND THE INTENDED APPELLANT BEFORE THE COURT OF APPEAL IS DIRECTED TO ENSURE THAT THE MEMORANDUM OF APPEAL IS FILED BEFORE THE COURT OF APPEAL WITHIN 14 DAYS FROM THE DATE OF THIS RULING.**

**D. IN THE EVENT THE APPLICANT HEREIN FAILS TO FILE THE MEMORANDUM OF APPEAL BEFORE THE COURT OF APPEAL WITHIN 14 DAYS FROM TODAY'S DATE, THE ORDER NO. B HEREINABOVE SHALL STAND VACATED AND/OR LAPSED.**

**E. THE APPLICANT IS FURTHER DIRECTED TO DEPOSIT A SUM OF KENYA SHILLINGS SEVEN HUNDRED THOUSAND (KSHS 700,000/-) AS SECURITY OF COSTS WITHIN 21 DAYS FROM THE DATE OF THIS RULING.**

**F. IN THE EVENT OF FAILURE TO DEPOSIT THE SECURITY OF COSTS WITHIN 14 DAYS AS PROVIDED IN ORDER NO. E HEREINABOVE, ORDER NO. B HEREINABOVE SHALL STAND VACATED AND/OR LAPSED.**

**G. THE COSTS OF THE PRESENT APPLICATION WILL ABIDE THE OUTCOME OF THE INTENDED APPEAL.**

**DATED, SIGNED and DELIVERED at ELDORET this on this 19<sup>TH</sup> DAY OF MARCH 2026.**

**EMMANUEL M. WASHE**

## **JUDGE**

### **IN THE PRESENCE OF:**

Court Assistant: Brian

Advocate for Applicant: Mr. Omboto

Advocate for Respondent: Ms. Tum holding brief for Dr. Chebii