



REPUBLIC OF KENYA



**KENYA LAW**  
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**Aluso v Aggrey Odiwuor Kenyatta & 2 others (Environment and Land Appeal E263 of 2026) [2026] KEELC 1592 (KLR) (23 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1592 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND APPEAL E263 OF 2026**  
**EK WABWOTO, J**  
**MARCH 23, 2026**

**BETWEEN**

**SELINA ALUSO ..... APPELLANT**

**AND**

**AGGREY ODIWUOR KENYATTA ..... 1<sup>ST</sup> RESPONDENT**

**MERCY WANGARI KAHIA ..... 2<sup>ND</sup> RESPONDENT**

**ORBIT CHEMICAL INDUSTRIES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to the Appellant's/Applicant's application dated 6<sup>th</sup> March, 2026 which seeks a stay of execution against the judgment and orders issued on 28<sup>th</sup> December 2025 by Hon. M. A. Otindo (SPM) in respect to Milimani CMELC No. E352 of 2023.
2. The application is premised on the ground on its face and the supporting affidavit of Selina Aluso sworn on even date.
3. The application was opposed by the 1<sup>st</sup> Respondent who filed a Replying Affidavit sworn by Aggrey Odiwuor Kenyatta on 17<sup>th</sup> March 2026 and a Preliminary Objection dated 17<sup>th</sup> March 2026.
4. It was the Applicant's case that the Learned Magistrate in Milimani CMCEL No. E352 of 2023 had delivered her judgment on 28<sup>th</sup> November 2025 wherein she issued eviction orders against her and further directed her to pay the 1<sup>st</sup> Respondent Kshs. 100,000/= as compensation for trespass.
5. It was averred that the 1<sup>st</sup> Respondent is in the process of executing the judgment and she is apprehensive that if the 1<sup>st</sup> Respondent is not restrained, she will be evicted and her house demolished and thus the appeal will be an academic exercise and rendered nugatory.



6. It was further averred that on 6<sup>th</sup> March 2026 through the Daily Nation Newspaper the Applicant published a Notice to Vacate the land failure of which will lead to legal eviction. The Notice was annexed as annexure "SA-6". Hence therefore for the interest of justice the said application ought to be allowed and further the Applicant is willing to deposit the awarded decretal sum in court as security pending the hearing and determination of the appeal.
7. The 1<sup>st</sup> Respondent argued that the application is subjudice. The same issues are already subject to the application dated 11<sup>th</sup> and 16<sup>th</sup> December 2025 which are pending for hearing on 11<sup>th</sup> June 2026. The instant application therefore offends the mandatory provisions of Section 6 of the [Civil Procedure Act](#).
8. It was also argued that the trial court had found that the Applicant was not in occupation of the suit parcel. The structures on the property had been removed and the 1<sup>st</sup> Respondent took possession of the property and hence therefore the Applicant does not possess the suit property and there is nothing to be stayed.
9. It was contended that the application is defective because it seeks to stay execution on both L.R No. Nairobi Block 263/1030 and 1031 yet the Applicant by her own admission only claims Block 1031. The Applicant does not have ownership documents or title to claim ownership. No irreparable harm or damage would be suffered because she is not in occupation of the suit premises.
10. In respect to the Notice in the Daily Nation of 6<sup>th</sup> March 2026; it was averred that the same was not issued by the 1<sup>st</sup> Respondent. Musyoka Matheka, had sworn an affidavit denying ever issuing any advert and he was shocked to see the advert and his name on the same. The advert was fraudulently created to hoodwink the court into granting the orders which had been previously declined.
11. During the plenary hearing of the application, Learned Counsel Mr. Alinyo submitted on behalf of the Applicant while Learned Counsel Mr. Kimathi submitted on behalf of the 1<sup>st</sup> Respondent.
12. Having considered the application, rival affidavit, the objection filed and oral submissions made by Counsel on behalf of the parties, the following are the key issues for consideration: -
  - i. Whether this application is subjudice.
  - ii. Whether the application meets the threshold for grant of the stay orders sought.
13. The primary statutory anchor for this doctrine is Section 6 of the [Civil Procedure Act](#), which provides:
 

"No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title..."
14. Furthermore, Section 3 of the [Environment and Land Court Act](#) mandates this Court to ensure the expeditious and efficient disposal of disputes, which necessitates avoiding a multiplicity of suits.
15. The 1<sup>st</sup> Respondent has argued that this application is subjudice in view of the pending application dated 16<sup>th</sup> December 2026 while the Applicant on the other hand argued that the new development relating to a publication of the Notice in the Daily Newspaper dated 6<sup>th</sup> March 2026 prompted her to move the court.
16. The Supreme Court of Kenya in the case of Gatirau Peter Munga =Versus= Dickson Mwenda Kithinji & 2 Others (2014) eKLR emphasized that the purpose of the subjudice rule is to prevent a multiplicity of suits and conflicting decisions. However, the Court of Appeal in Kenya Commercial



Bank Limited =Versus= Benjor Amalgamated Limited (2017) eKLR clarified that where a material change of circumstances occurs, a party may seek fresh relief or move the court appropriately. While the Applicant claims the 6<sup>th</sup> March 2026 advertisement is such a change, the validity of this new development is the crux of the matter.

17. Musyoka Matheka, the 1<sup>st</sup> Respondent's neighbour and resident of Pipeline Estate, swore an affidavit on 17<sup>th</sup> March 2026 denying that he gave out a Notice for publication and denying ever issuing the same. Paragraph 7 of the said affidavit was deposed as follows:-

“ THAT, I therefore swear this affidavit to state that I neither issued, the eviction notice dated 5<sup>th</sup> March 2026 nor published it through the classified advert appearing in the Daily Nation of 6<sup>th</sup> March 2026”.

18. The Court observes that the Applicant did not effectively controvert or challenge this specific denial with any verifiable proof of the advertisement origin.
19. It is a well settled principle that facts set out in an affidavit which are not specifically denied are deemed admitted. This was recently reaffirmed in the Supreme Court case of David Mulwa Malamu =Versus= John Waweru Gakuru & Another (2025) KESC 2 (KLR) and the Court of Appeal case of Standard Chartered Financial Services Limited =Versus= Manchester Outfitters (2024) KECA 242 (KLR).
20. Similarly, in the case of Habib Bank A.G Zurich =Versus= Eugene Marion Rose (1983) KLR 45, it was stated that since the Applicant failed to dispose the Respondent's denial, this Court is bound to act upon the Respondent's facts as correct. Consequently, the new development on the Notice in the Daily Newspaper having been placed by the 1<sup>st</sup> Respondent remains unsubstantiated.
21. In respect to substantial loss, it is noteworthy that the 1<sup>st</sup> Respondent was able to adduce photos showing that the property is vacant and that he is the one in occupation and as such the Appellant cannot suffer any irreparable harm and damage. The affidavit of Musyoka Matheka corroborated the 1<sup>st</sup> Respondent's position. In the case of Mary Wambui Munene =Versus= Peter Gichuki King'ara (2014) KESC 7 (KLR) it was stated that substantial loss is a question of fact. The court in applying the said position finds that the Applicant has been unable to demonstrate any substantial loss at this stage to the satisfaction of the Court.
22. In conclusion, it is the finding of this Court that the Applicant has failed to demonstrate the mandatory principles for the grant of stay of execution as contemplated under Order 42 Rule 6 of the Civil Procedure Code.
23. Consequently, it is the finding of this court that the application lacks merit.
24. Accordingly, the court makes the following orders: -
- i. The Applicant's Notice of Motion dated 6<sup>th</sup> March 2026 is hereby dismissed.
  - ii. Costs of this application shall abide the outcome of the main Appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF MARCH, 2026.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Kimathi for 1<sup>st</sup> Respondent.



Mr. Alinyo for Applicant.

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent.

Court Assistants: Mary Ngoira and David Ngoosa.

