

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAKURU
ELC CIVIL SUIT NO. 314 OF 2014

JULIUS KANDIE CHESANG
.....**PLAINTIFF/APPLICANT**

VERSUS

PETER KAMAU MUGO 1ST
DEFENDANT/RESPONDENT

COUNTY LAND REGISTRAR,
NAKURU COUNTY 2ND
DEFENDANT/RESPONDENT

THE HONOURABLE ATTORNEY
GENERAL..... 3RD DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 15th February 2026 brought under **Articles 40 and 159 of the Constitution of Kenya, 2010, Section 1,3,13,18 and 19 of the Environment and Land Court Act Cap.8D Laws of Kenya, Order 42 Rule 6, Order 51 Rule 1,3 & 4 of the Civil Procedure Rules, 2010 and all enabling provisions of the Law).**
2. It seeks orders:
 - (i) **Spent**

(ii) Spent

(iii) This Honorable Court be pleased to issue an order staying the execution and/or enforcement of the Judgment of Antony O Ombwayo delivered on 18th December 2025, together with any other consequential orders arising therefrom, pending the hearing and determination of the intended appeal from said judgment to the Court of Appeal.

(iv) The Honorable Court be pleased to issue any orders to meet the ends of justice.

(v) The costs of the Application be provided for.

3. The grounds are on the face of the Application and are set out in paragraphs 1 to 8.
4. The Application is supported by the affidavit of Julius Kandie Chesang, the plaintiff/ Applicant sworn on the 15th January 2026 and a further Affidavit sworn on the 9th February 2026.
5. The Application is opposed. There is a Replying Affidavit sworn by Peter Kamau Mugo, the 1st Defendant/ Respondent on the 2nd February 2026.
6. The Notice of Motion was canvassed by way of written submissions.

THE PLAINTIFF'S SUBMISSIONS

7. They are dated 14th February 2026. It is submitted that the primary issue is whether this Honorable Court ought to grant an order of stay of execution pending Appeal against

the Judgment dated 18th December 2025. Reliance is placed on the **Order 42 rule 6(1) (2) of the Civil Procedure Rules** and the case of **Khaki & 28 others Vs Juma & 5 others [2025] KEELC 333 (KLR)**.

8. It is submitted that the plaintiff shall suffer substantial loss if the order of stay of execution is not granted as he may permanently lose ownership and possession of the suit property. Further that execution will result in the cancellation of his Title. He has put forward the case of **Peter Nakupang Vs Nautu Lowar [2022] KEELC 1473 (KLR)**.
9. He further submitted that the application has been brought without unreasonable delay as judgment was delivered on the 18/12/2025.
10. The plaintiff also submitted that he is willing to provide security for due performance of the Decree. He prays that the Application be allowed.

THE 1ST DEFENDANTS /RESPONDENTS SUBMISSIONS

11. They are dated 13th February 2026. They raise two issues for determination:

- (i) **Whether the order sought by the Applicant are unmerited and ought not to be granted as a matter of law and fact**
- (ii) **Whether the Applicant has satisfied the tests for the grant of stay of execution pending Appeal.**

12. The 1st Defendant/Respondent submitted that the plaintiffs/Applicant's suit was dismissed in its entirety constituting a negative order incapable of enforcement under order 42 rule 6 of the Civil Procedure Rules, 2010. It is further submitted that while the Judgment directs the 2nd Defendant/Respondent to cancel the plaintiff/Applicant's title and effect rectification, these actions are administrative in nature. The plaintiff/Applicant is not required to act or abstain from acting any way. He has put forward the cases of ***Chege & Another Vs Mwangi & Another [2024] KEELC 5625 (KLR)*** where the court relied on the case of ***Unvendo Olingo Vs Salim Chetechi Makokha & Another (2019) eKLR; Faith homes of Kenya Vs Robert Cherukwo [2021] eKLR.***

13. It is submitted that the plaintiff/applicant has merely alleged apprehended eviction and deprivation of property, yet no evidence has been placed before this court to demonstrate imminent or actual loss. The alleged loss is therefore speculative and premature as no evidence has been tendered to prove any loss. Reliance is placed in the case of ***Faith Homes of Kenya*** (supra).

14. The 1st Defendant/Respondent further submitted that he has been kept away from the suit property for over ten (10) years pending the determination of this suit, largely on account of interim orders issued during the pendency of the proceedings.

15. It is submitted that in balancing the competing interest of the parties, the scales tilt in favour of allowing the 1st Respondent/Defendant to enjoy the fruits of the judgment rather than maintaining the status quo to the continued detriment of the successful party. He prays that the Application be dismissed with costs.

ANALYSIS AND DETERMINATION

16. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are:

(i) Whether the Notice of motion meets the threshold for grant of stay of execution pending appeal.

(ii) Who should bear costs of this Application?

17. **Order 42 rule 6(2) of the Civil Procedure Rules** provides that

(2) No order for stay of execution shall be made under subrule (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;

18. In ***Khaki & 28 others Vs Juma & 5 others [2025] KEELC 333 (KLR)*** the court held thus;

“The court in the case of Muchiri versus Rutere (**Environment & Land Case 319 & 316 of 2017 (Consolidated) (2023) KEELC 22377 (KLR) (14 December 2023) (ruling) held;**

"Stay of execution pending appeal is a discretionary power bestowed upon this court by law. ***In Butt v Rent Restriction Tribunal (1982) KLR 417***, the Court of Appeal gave guidance on how a court should exercise the said discretion and held that-;

- a. The power of the court to grant or refuse an application for a stay of execution is discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
- b. The general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory/ should that appeal court reserve the Judge's decision.
- c. A Judge should not refuse a stay if there are good grounds for it granting it merely because in his opinion, a better remedial mal/ become available to the applicant at the end of the proceedings.
- d. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances in this case were that there was a larger

amount of rent in dispute and the appellant had an undoubted right of appeal.

- e. The court in exercising its power under order XLI rule 4(2) (b) of the Civil Procedure Rules, can Order Security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse. "
19. I am satisfied that this Application has been filed without inordinate delay. Judgment was delivered on the on the 18th December 2025 and the application was filed on the 15th December 2026.
20. It is the plaintiff's/Applicant's case that he will suffer substantial loss if the orders of stay are not granted. I note that the plaintiff's suit was dismissed in its entirety while the 1st defendant's counter claim was allowed.
21. There is an order directing the County Land Registrar (2nd Defendant) to cancel the title issued to the plaintiff and to rectify the registers to reflect the 1st Defendant as the owner. In my view this is not a negative order.
22. I find that the plaintiff/Applicant has demonstrated substantial loss in that he will cease to be the registered owner if these orders are not granted. There is need to preserve the substratum of the Appeal pending the hearing and determination of the said Appeal.
23. In conclusion I find merit in this application and I grant the order sought namely:

(a) That an order of stay is hereby granted staying the Judgment dated 18/12/2025 and a Decree pending hearing and determination of the Appeal.

On condition that the plaintiff/ Applicant do deposit Ksh 300,000/= as security for costs in a joint interest earning account in the names of both counsel for the plaintiff and the first defendant within forty-five (45) days from the date of this ruling.

In Default the orders of stay shall lapse automatically.

(b) That costs of this Application be borne of the plaintiff/Applicant.

Ruling dated, signed and delivered virtually at Nakuru this 19th day of March 2026.

L KOMINGOI

JUDGE

In presence of

Mr Wakhisi for Mr. Khaseke for the plaintiff

Ms Cheruiyot for the for the 1st Defendant.

No appearance for the 2nd defendant

No apperence for the 3rd Defendant

Court Assistant : Nelima