

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KAPSABET
ELC CASE NO. E006 OF 2025

ELIZABETH JEBET
CHERUIYOT.....PLAINTIFF/RESPONDENT

-VERSUS-

PETER KIPKEMBOI MAIYO.....1ST
DEFENDANT/APPLICANT

THE CHIEF LAND REGISTRAR.....2ND
DEFENDANT

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

RULING

1. This ruling is in respect of an application by way of a Notice of motion dated 14th November 2025 by the applicant, Elizabeth Jebet Cheruiyot through Ngala and Company Advocates for the following orders;
 - a) Spent
 - b) That pending the hearing and determination of the appeal to the Court of Appeal, there be a stay of

proceedings in this case Kapsabet Environment and Land Case No. E006 of 2025.

c) That costs of this application be provided for.

2. The foundation of the application is the affidavit of nineteen paragraphs sworn on even date by A.C Ngala learned counsel for the applicant and the grounds, inter alia;

a) This case Kapsabet Environment and Land Case No. E006 of 2025 is still pending hearing and determination.

b) Vide a ruling dated 30th September 2025, this Honourable Court dismissed the 1st Defendant/Applicant's Preliminary Objection and Grounds of Opposition dated 2nd May 2025.

c) Being dissatisfied with the Ruling, the 1st Defendant/Applicant has preferred an appeal to the Court of Appeal and has filed a Notice to that effect.

d) This appeal raises weighty issues and arguable issues on res judicata which deserve a hearing before the Court of Appeal

e) No prejudice shall be occasioned on the Plaintiff, 2nd and 3rd Defendants on issuance of the stay of proceedings.

f) This application has been filed timely and without delay.

3. The respondent/plaintiff opposed the application by way of a replying affidavit of 22 paragraphs sworn on 21st January 2026 by her counsel, Margaret Ingutia who averred in part, that the plaintiff's preliminary objection based on res judicata doctrine was dismissed by this court. That thus, the 1st defendant/applicant preferred an appeal at the Court of Appeal on 20th November 2025 but the applicant has not taken any step to-date to prosecute it. That filing of the appeal does not operate as an automatic stay of proceedings herein and that the stay order sought is a drastic and exceptional remedy to be granted sparingly. That the applicant has not demonstrated any exceptional circumstances for allowing the application.
4. Also, the respondent averred that there is an interim preservation order already in place in this suit. That therefore, to allow the application would offend **Article 159 (2) (b) of the Constitution of Kenya 2010.**
5. The application was heard way of written submissions following the directions of the court given on 21st January 2026 further to **Order 50 Rule 16 of the Civil Procedure Rules 2010.**
6. By the submissions dated 24th February 2026, learned counsel for the applicant referred to the orders sought in the application and that the plaintiff/respondent filed this suit for, inter alia illegal withholding of

title and resurvey of the suit land. That the applicant raised a preliminary objection to the suit citing res judicata doctrine. That the stay order sought is within judicial discretion.

7. To fortify the submissions, counsel cited the case of **Kenya Wildlife Service vs James Mutembei (2019) eKLR** pertaining to the three factors including the need to expedite the case and prima facie merits of the intended appeal or arguable appeal for the grant of the stay order sought in the application. That stay proceedings is quite high and stringent as noted in **Halsbury's Laws of England 4th Edition**. That the appeal is tenable as the preliminary objection meets the threshold in **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA** hence, the application is merited and be allowed accordingly.
8. In the amended submissions dated 5rd march 2026, learned counsel for the plaintiff/respondent referred to the orders sought in the application and in the main suit as well as this court's decision on the preliminary objection and the appeal preferred therefrom. Counsel relied on **Global Tours and Travels Ltd-vs- Five Continents Travel Ltd {2015} KECA 789 (KLR) and Ngetich vs Goren {2025} KECA 565 (KLR)** and submitted that the appeal would be rendered nugatory if the application is allowed.

9. In addition, counsel termed the stay order sought an exceptional remedy that would prolong litigation and occasion grave injustice and undermine both the respondent's constitutional right and the broader public interest in timely justice. That if the principal order is granted, let the applicant deposit cash in court or in the joint interest earning account in the names of the respective advocates for the parties within 30 days and costs be borne by the respondent.
10. In the foregone, the issue for determination is whether the applicants deserve stay of proceedings and costs sought in the application.
11. Notably, stay of proceedings/execution pending an appeal is rooted in **Order 42 Rules 6 and 7 of the Civil Procedure Rules 2010**. Plainly, the applicant must satisfy the triple principles namely that substantial loss is likely to result if stay is not granted, that the application must be made without unreasonable delay and provision security by the applicant as the court orders for due performance of the decree. Nonetheless, an appeal does not automatically operate as a stay but the court may order a stay for sufficient cause.
12. On substantial loss, in the case of **Kenya Shell Limited-vs-Benjamin Karuga Kibiru {1986} KECA 94 (KLR)**, the Court of Appeal remarked;

‘.....In an application of this nature the applicant should show the damages it would suffer if the order of stay is not granted. By granting a stay would mean that status quo should remain as it were before judgment.....On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgment.....it to exercise its discretion in granting the order of stay.’

13. On delay, this court rendered its ruling on the preliminary objection on 30th Sept 2025 and the instant application was instituted on 14th November 2025. **Order 50 of the Civil Procedure Rules 2010 provides for time.** That under **Article 10 (2) of the Constitution of Kenya 2010**, stay remedy sought in the application is an equitable principle and not a right. Nonetheless, it is common ground that an appeal has been filed at the Court of Appeal.

14. Concerning security, the same is not necessary in order to focus on whether the application is merited in the obtaining circumstances; see **Hassan & another vs Mackay & 2 others (2025) eKLR.**

15. Further, the applicants have preferred a Notice of Appeal to the Court of Appeal from this Honourable court's ruling rendered on 30th September 2025. Under **Order 42 Rule 4 of the Civil Procedure Rules 2010**, by the

Notice of Appeal (CAN 1) annexed to the affidavit in support of the application, the appeal is deemed duly filed at the Court of Appeal.

16. Clearly, the parties including the applicant have the right to access justice and the unlimited right to have their appeal heard before the Court of Appeal further to the Notice of Appeal being guided by **Articles 48, 50 (1) and 25 (c) of the Constitution of Kenya 2010, sections 3 and 19 of the Environment and Land Court Act 2015 (2011) and sections 3 and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya; see also James Kanyiita Nderitu-vs-Marios Philotas Ghikas and another (2016) eKLR.**

17. Moreover, this court subscribes to the decision in the case of **Butt-vs-Rent Restriction Tribunal {1979} KECA 22 (KLR)** where the Court of Appeal remarked;

‘.....and the appellant has an undoubted right of appeal.....’

18. Furthermore, the applicant asserted that the appeal duly filed has weighty and arguable issues. In such an application, this court is not unconscious of the twinned principles; that the applicant must show that the appeal or intended appeal is arguable or not frivolous and that unless the order of stay sought is not granted, the success of the appeal or intended appeal will be rendered nugatory. In the case of **Somak**

Travels-vs-Gladys Aganyo {2016} KECA 669 (KLR), the Court of Appeal

held thus;

'In determining whether the intended appeal, if successful would be rendered nugatory if we do not grant the orders sought, we *are alive to the fact that we must balance the competing claims of both parties and make orders that best suit the interests of justice.*'

19.In the best interests of justice, I find the application merited and it is hereby allowed in terms of the principal order of stay of proceedings sought therein.

20. By the nature of the application and the circumstances, costs of the same to abide the outcome of the appeal at the Court of Appeal.

21.It is so ordered.

Dated and Delivered at Kapsabet this 18th day of March 2026.

Hon. G.M.A. Ong'ondo

JUDGE

In the presence of;

1. Ms. Ngala learned counsel for the 1st defendant/applicant
2. Ms. Ingutia learned counsel for the plaintiff/respondent

3. Walter, court assistant