

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC NO E089 OF 2025

PRICILLA CHEPNGENO KERICH.....APPELLANT
VERSUS
JAMES GATIBA NYINGI.....RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 2nd December, 2025, by the Appellant seeking the following orders:

- a) *Spent.*
- b) *Spent.*
- c) *Spent.*
- d) *THAT pending the hearing and determination of the appeal, this Honourable court be and is hereby pleased to issue an order of stay of execution of the judgment delivered on 20th November, 2025 in Molo Chief Magistrate’s ELC Case No. E048 of 2025.*
- e) *THAT pending the hearing and determination of the appeal, the Honourable Court be and is hereby pleased to order that the status quo obtaining on land parcel no. Molo South/Keringet Block 6/562 (Teta) prior to the delivery of the judgment delivered on 20th November, 2025 in Molo Chief Magistrate’s ELC Case No. E048 of 2025, being that the Appellant is in possession, use and occupation of Land Parcel Molo South/Keringet Block 6/562 (Teta) be maintained by the parties.*
- f) *THAT the costs of the application be provided for.*

2. The application is supported by the annexed affidavit of Priscilla Chepngeno Kerich the Appellant who deponed that Judgment was delivered on 20th November, 2025, in Molo Chief Magistrate ELC E048 of 2025, where the

court declared the Respondent as the owner of the suit property known as Molo South/Keringet Block 6/562 (Teta), and having been dissatisfied with the judgment, she filed a Memorandum of Appeal dated 2nd December, 2025.

3. The Applicant further deponed that she is the legitimate beneficial owner of the suit property, having purchased it from Mautor Investment Co. Ltd on 6th February, 1997, and has been in possession since 1993.

4. According to the Applicant, the Respondent failed to produce any evidence of how he obtained the title deed to the suit property, and the Trial Magistrate ordered her to pay Kshs. 500,000/= as general damages for trespass and be evicted from the property. She urged the court to allow the application for stay of execution as she had brought it without undue delay, and that she is willing to deposit security for due performance of the decree.

APPLICANT'S SUBMISSIONS

5. Counsel for the Appellant filed submissions dated 13th January 2026, and identified the two issues for determination as follows:
 - a) *Whether the Applicant has met the conditions requisite for granting of stay of execution pending hearing and determination of the preferred appeal.*
 - b) *Who shall bear the costs of this application?*

6. On the first issue, he relied on Order 42 Rule 6(2) of the Civil Procedure Rules and the case of **Sam Con Limited V National Bank of Kenya Limited & 2 Others [2023] KEHC 26502 (KLR)**, and reiterated the provisions of Order 42 Rule 6, that must be met before an order of stay of execution can be granted.

7. On the second issue as to whether the Applicant will suffer substantial loss, if the order is not granted, counsel relied on the case of **Desbro (Kenya) Limited vs General Printers Limited: NCBA Bank Kenya PLC & another (Objectors) [2021] eKLR**, where the court referred to the case of **Tropical Commodities Suppliers Limited 7 others v International Credit Bank Ltd (in liquidation) (2004) 2 EA 331**, and submitted that the Appellant has been in actual possession of the suit property since 1993 and her eviction may result in her home being destroyed thus constituting substantial loss.
8. Mr. Langat submitted that the application was made without unreasonable delay since the court delivered its judgment on 20th November, 2025, and the appeal filed on 2nd December, 2025.
9. Counsel further stated that the Appellant was ready to comply with conditions set by the court on security for the due performance of the decree, relied on the case of **Mwanza V Mulinge [2024] KEHC 1847 (KLR)**, and urged the court to allow the application as prayed.

RESPONDENT'S SUBMISSIONS

10. Counsel for the Respondent filed submissions dated 26th January 2026, and submitted that the Appellant had several parcels of land which demonstrates that she is not landless. It was counsel's further submission that the Appellants Appeal has no chances of success and urged the court to order that the Appellant deposit Kshs. 500,000/= plus costs in a joint account as a condition for stay of execution.

ANALYSIS AND DETERMINATION

11. The main issue for determination is whether the Applicant has met the threshold for grant of stay of execution as provided for under Order 42 Rule 6 of the Civil Procedure Rules.
12. Order 42 Rule 6 (2) provides as follows:

“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; and
(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
13. The Appellant filed this application and the Memorandum of Appeal on 2nd December, 2025, while the judgment was delivered on 20th November, 2025, hence the application was filed timeously without undue delay.
14. In the case of **Jaber Mohsen Ali & another v Priscillah Boit & another [2014] eKLR**, the court held as follows:

“The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”
15. On the issue of whether the Applicant has established that she will suffer substantial loss, in the event that stay of execution is not granted, the Appellant argued that she stood to be evicted from the suit parcel which has been her home since 1993. The Trial court in its judgment found that the

Respondent was the lawful owner of the suit property, and issued an eviction order against the Appellant to vacate the suit land and pay damages for trespass.

16. In the case of **Siegfried Busch V MCSK [2013] eKLR**, the court held as follows:

“A superior court to which an application has been made must recognize and acknowledge the possibility that its decision for refusal to grant a stay of execution could be reversed on appeal. It would be best in those circumstances to preserve the status quo so as not to render an appeal nugatory. Even in doing so, the court should weigh this against the success of a litigant who should not be deprived of the fruits of his judgment...”

17. The Appellant’s argument that she will be evicted if stay of execution orders are not granted, is not *per se* a convincing ground that she will suffer substantial loss, as the eviction order is as a result of an adjudication process in court where both parties were heard and a regular judgment delivered. It is noted that the Appellant was dissatisfied by the verdict and has filed an appeal to this court.

18. In the case of **Noor Said v Mary Mwawasi Manga [2022] eKLR**, the court held as follows:

“The critical issues arising in this application are whether the applicant stands to suffer substantial loss if the order of stay is not granted and the question of security. The applicant has of course argued that if she is evicted and the respondent deals with the property, and she subsequently succeeds on appeal, she may find no house to return to. I am persuaded that if this happens then the applicant may suffer substantial loss. However, I think this is one

case where the circumstances demand for security to be presented.”

19. The grant of stay of execution orders is discretionary, but the court must exercise the discretion judiciously in adherence to the principles of justice as fairness. The court must also take into consideration the rights of a successful litigant and for the Appellant who would like a second bite of the cherry, as was held in the case of Kenya **Commercial Bank Limited V Sun City Properties Limited & 5 Others** [2012] eKLR, as follows:

“In an application for stay, there are always two competing interests that must be considered. These are that a successful litigant should not be denied the fruits of his judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should always be balanced in a bid to balance the two competing interests, the Courts usually make an Order for suitable security for the due performance of the Decree as the parties wait for the outcome of the Appeal. I do not see, why the same should not be applicable in this case.”

20. The Applicant stated that she is ready and willing to abide by any conditions imposed by the court as security for the due performance of the decree. In the interest of justice, I allow the application on condition that the Applicant deposits Kshs. 200,000/= in a joint interest earning account of the Advocates on record for the parties within 30 days, failure to which the order lapses. Costs of the application to abide by the outcome of the appeal. The Applicant to fast track the hearing of the Appeal.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 23RD
DAY OF MARCH 2026.**

**M. A. ODENY
JUDGE**