



REPUBLIC OF KENYA



KENYA LAW
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Odongo & another v Superior Homes (Kenya) PLC (Environment and Land Appeal E017 of 2025) [2026] KEELC 1697 (KLR) (24 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1697 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E017 OF 2025**

NA MATHEKA, J

MARCH 24, 2026

BETWEEN

JACKTON OMONDI ODONGO 1ST APPELLANT

EVERLINE MORAA OMONDI 2ND APPELLANT

AND

SUPERIOR HOMES (KENYA) PLC RESPONDENT

RULING

1. The applications are dated 17th and 19th March 2025 and is brought under Article 50 & Article 159 of *the Constitution* of Kenya, 2010, Sections 1A,1B,3A& 65 of the *Civil Procedure Act* Cap 21 Laws of Kenya: Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, 2010 seeking the following orders;
 1. That this application be certified as urgent, the same be heard ex-parte in the first instance and its service be dispensed with in the first instance due to its urgency.
 2. That pending inter-partes hearing and determination of the Appellants/Applicants' Notice of Motion Application dated 17th March 2025 on 8th April 2025, this Honourable Court be pleased to stay of execution of the Judgment delivered on 21st February 2025, before Hon. Derrick K. Kuto, Senior Principal Magistrate Mavoko Chief Magistrates' Court MCELC NO. E120 of 2022: Jackton Omondi Odongo & Everline Moraa Omondi- versus- Superior Homes Kenya PLC
 3. That pending inter-partes hearing and determination of the Appeal this Honourable Court be pleased to stay of execution of the Judgment delivered on 21st February 2025, before Hon. Derrick K. Kuto, Senior Principal Magistrate Mavoko Chief Magistrates' Court MCELC NO. E120 of 2022: Jackton Omondi Odongo & Everline Moraa Omondi- versus- Superior Homes Kenya PLC



4. That the cost of this Application be in the cause.
2. They are based on the annexed affidavit of Jackson Omondi Odongo and grounds that the subordinate Court delivered its Judgment in MCELC No. E120 of 2022: Jackton Omondi Odongo & Everline Moraa Omondi- Versus- Superior Homes Kenya PLC on the 21st February, 2025 where it proceeded to enter Judgment against the Appellants/Applicants by declaring that the agreement between the Appellants/Applicants herein be terminated and also proceeded to award costs to the Respondents herein. That the Appellants/Applicants were also granted 30 days stay of Execution of the Judgment upon its delivery, which stay lapses on 21st March 2025. That the Appellants/Applicants were aggrieved by the Judgment of the Trial Court delivered on 21st of February 2025 and have in their effort at appealing against the whole of that Judgment, lodged a Memorandum of Appeal, filed on 17th March 2025. That the Appellants/Applicants herein reside in the suit premises, the substratum of the appeal and are at risk of being evicted therefrom by the Respondents, unless this Honourable Court intervenes and grants them stay of execution, which actions will render the appeal nugatory and the entire appeal process moot. That together with the Memorandum of Appeal filed on 17th March 2025, the Appellants/Applicants filed a Notice of Motion Application seeking Stay of Execution of the subordinate Judgment on the same day, which application was placed for consideration before Hon. Lady Justice Nelly A. Matheka on 18th March 2025. That the Honourable Judge declined to appreciate the urgency therein and issued an inter-partes hearing date 8th April 2025, at which time the Appellants/Applicants risk having been evicted, rendering them homeless and their appeal an academic exercise, as they will have already lost the substratum of the appeal, if they are evicted and the property sold to third parties. That the Appellant/Applicants are likely to suffer substantial loss and irreparable damage if the process of execution is put into motion by the Respondent, because if the Respondent evicts them from the suit premises, they will be rendered homeless and might equally not recover the suit property nor the substantial amounts of money paid for its purchase from the Respondent, if stay is not granted pending the inter-partes hearing of their Notice of Motion Application dated 17th March, 2025 on 8th April 2025. That no injustice or substantial loss will be occasioned to the Respondent if stay is granted, as they already hold substantial amounts in part of the purchase price paid by the Appellants/Applicants and if anything, any losses incurred by them can be quantified and defrayed from the proceeds of the sale of the property, already in their possession, in the unlikely event the application for stay and appeal fails.
3. I have considered the applications and submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the Civil Procedure Rules as follows;

“No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred, shall be at liberty, on an application being made, to consider such application and to make such orders thereon as may to it seem just, any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have the orders set aside.”
4. Order 42, rule 6 states:

“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; 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.”
5. The appellants need to satisfy the Court on the following conditions before they can be granted the stay orders:
 1. Substantial loss may result to the applicant unless the order is made.
 2. The application has been made without unreasonable delay, and
 3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.
6. The principles governing the exercise of the court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of *Reliance Bank Ltd (In Liquidation) vs Norlake Investments Ltd – Civil Appl. No. Nai. 93/02 (UR)*, thus;

“Hitherto, this Court has consistently maintained that for an application under rule 5(2) (b) to succeed, the applicant must satisfy the court on two matters, namely:-

 1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
 2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”
7. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange vs Richard Nyagaka Tongi & 2 Others eKLR* where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;

“..... The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”
8. In the case of *Mohamed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat (2013) eKLR*, the court stated that;

“That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right”



9. We are further guided by the court's decision in Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others Civil Appeal No. 291 of 1997, at Page 4 as follows:

“ . . . the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . . the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.”

10. I find that the Applicant/Appellant is not guilty of laches as judgement was delivered on 21st February 2025 and the first application is dated 17th March 2025. The trial court entered Judgment against the Appellants/Applicants by declaring that the agreement between the Appellants/Applicants herein be terminated and also proceeded to award costs to the Respondents herein. That the Appellants/Applicants were aggrieved by the Judgment of the Trial Court delivered on 21st of February 2025 and have in their effort at appealing against the whole of that Judgment, lodged a Memorandum of Appeal, filed on 17th March 2025. That the Appellants/Applicants herein reside in the suit premises, the substratum of the appeal and are at risk of being evicted therefrom by the Respondents, unless this Honourable Court intervenes and grants them stay of execution, which actions will render the appeal nugatory and the entire appeal process moot. They dispute the outstanding amount and state that they are willing to pay the amount of kshs 7,800,000/= through a mortgage facility.

11. The Respondent stated that the last payment by the applicants was in April 2024 and since then no attempts have been paid to pay even the undisputed balance and the outstanding balance as at 14th October 2025 was Kshs. 10,113,726/=

12. I find that the grounds of appeal raised in the memorandum of appeal do raise an arguable appeal and I find that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. I find that the applicant has fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is merited and I grant the following orders;

1. That pending inter-partes hearing and determination of the Appeal this Honourable Court be pleased to stay of execution of the Judgment delivered on 21st February 2025, before Hon. Derrick K. Kuto, Senior Principal Magistrate Mavoko Chief Magistrates' Court MCELC NO. E120 of 2022: Jackton Omondi Odongo & Everline Moraa Omondi- versus- Superior Homes Kenya PLC

2. That the cost of this Application be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF MARCH 2026.

N.A. MATHEKA

JUDGE

