

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT VOI**

**ELC APPEAL NO. E008 OF 2026**

**NJUGUNA                      KAGWARA                      .....**

**.....APPELLANT**

**=VERSUS=**

**EDWIN                      MAINA                      WANGECI.....**

**RESPONDENT**

**RULING**

1. This is a ruling in respect to a Notice of Motion dated 5<sup>th</sup> March 2026 in which the Applicant seeks stay of execution pending appeal.
2. A party seeking a stay of execution has to apply without unreasonable delay, demonstrate substantial loss to be suffered and offer security for due realization of the decree should the appeal not succeed. The said requirements are clearly outlined under **Order 42, Rule 6 (2) of the Civil Procedure Rules 2010.**
3. A stay of execution under order 42 of the Civil Procedure Rules is an interim order to suspend the rights of one party who is aggrieved with the judgment of the trial; court or

tribunal and wishes to exercise his or her right of appeal. Its main objective is to protect the substratum of the suit by delaying the execution process like attachment until the determination of the appeal. Being a discretionally remedy the Applicant must demonstrate that he or she has approached the court of equity with clean hands as succinctly stated in the case of **Jajbhay v Cassim 1939 AD 537-551** the court held on this maxim that:

***“All writers upon our law agree in this, no polluted hand shall touch the pure fountains of justice.”***

4. The application seeking stay is premised on the grounds on its face and the supporting affidavit sworn by the Applicant on even date.
5. It was averred that the Learned Magistrate **Hon. T.N. Sinkiyian, PM** delivered her judgment on 29<sup>h</sup> January 2026 in favour of the Respondent. In the said judgment, he was directed to demolish and remove the structures on the suit property within 60 days and further pay general damages of Ksh 500,000/-. The 60 days so granted will lapse and eviction and demolition will be irreversible if stay is not granted.

6. It was also averred that the Respondent has filed his party and party bill of costs and the same may be taxed before the appeal is heard.
7. **Learned Counsel Mr. Kiwinda** submitted on behalf of the Applicant and urged the court to grant the stay sought since the Applicant had met the threshold and demonstrated the applicable principles.
8. Counsel submitted that the application was filed timeously, there is an arguable appeal and substantial loss will be suffered if stay is not granted since eviction in itself will lead to irreparable and substantial loss.
9. In respect to the provisions of security pending the determination of the appeal, it was argued that the dispute is a land matter, it was not a monetary decree and no security should be provided.
10. The application was opposed by the Respondent vide a replying affidavit sworn on 18<sup>th</sup> March 2026. It was averred that the Respondent is in occupation of the land, the same has been secured vide the construction of the perimeter wall. It was also averred that the trial court had ordered the Appellant to pay general damages of Ksh

500,000/- together with costs of the suit which he has filed a party and party bill of costs of Ksh 224,945 that is pending for assessment.

11. **Learned Counsel Mr. Jengo** while submitting on behalf of the Applicant argued that the Applicant should be directed to provide security as a condition for grant of stay which should be equivalent to the amount of general damages of Ksh 500,000/- that was awarded by the trial court

12. The issue calling for determination is whether the Applicant has met the threshold for grant of the order of stay of execution sought.

13. From the judgment delivered by the trial court, the Applicant was ordered to pay a sum of Ksh 500,000/- as general damages to the Respondent. Considering that the Respondent has averred that he has no issue with the Court directing the deposit of the decretal sum as security then this Court in balancing the interest of both parties is inclined to direct as such. Security is paramount for the purposes of guaranteeing the due performance of the decree should the appeal not succeed. It is not aimed at

punishing the judgment debtor as was held in the case of **Arun C. Sharma vs Ashana Raikundlia T/A Raikundalia & Co. Advocates & Others [2014] eKLR.**

14. In considering an order for deposit of the decretal sum, the court may direct the deposit of the entire decretal sum or set such figure that may be deemed to be reasonable in the circumstances. The court can also set out the timelines and manner of its compliance with a view of curing any mischief that may be geared towards frustrating any compliance as directed by the Court.
15. The general principle of law is that the successful litigant in possession of a valid court judgement is entitled to the fruits of judgement unless there exist exceptional circumstances to deny him or her that right.
16. The Applicant is desirous of exercising it's right of Appeal. On the other hand, the Respondent wishes to enjoy the fruits of his judgment.
17. In balancing the competing interests of both parties, the application dated 5<sup>th</sup> March 2026 is hereby determined in the following terms;

- 1) A stay of execution of the judgment of Hon. T.N Sinkiyian (PM) delivered on 29.01.2026 in Voi M.C. ELC No. 27/2019 Edwin Maina Wangeci =Versus= Njuguna Kagwara is hereby granted pending the hearing and determination of the appeal filed herein on condition that the Applicant do deposit a sum of Kshs. 500,000/= as security for the due performance of the decree/order as may ultimately be binding on the Applicant.**
- 2) The aforementioned sum of Kshs. 500,000/= shall be deposited within 30 days from today in a joint interest earning account in the names of the Advocates of the Applicant and the Respondent or in court whichever is applicable.**
- 3) The Applicant is hereby directed to compile, file and serve the record of appeal within 30 days from today.**
- 4) In default of compliance with the condition in Order 1, 2 and 3 above, the stay of execution**

***hereby granted shall automatically lapse without further reference to this Court.***

***5) Costs of this application to abide the outcome of the appeal.***

It is so ordered.

**Dated, Signed and Delivered Virtually at Voi this 25<sup>th</sup> day of March, 2026.**

**E. K. WABWOTO  
JUDGE**

**In the presence of: -**

**Mr. Kiwinda for the Appellant.**

**Mr. Jengo for the Respondent.**

**Court Assistants: Mary Ngoira and David Ngoosa.**