

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELCLA NO. E051 OF 2025

REITS:.....APPELLANT/APPLICANT

VERSUS

ALEX KANYORO MUCHIRA (*suing as personal representative of JANE MUCHIRA deceased*)

KENYA AFRICA NATIONAL TRADERS & FARMERS UNION

LAND REGISTRAR MACHAKOS:.....RESPONDENTS

RULING

The application is dated 14th August 2025 and is brought under the provisions Order 42 Rule 6 of the Civil Procedure Rules Sections 1A and 1B of the Civil Procedure Act seeking the following orders;

1. That this application be certified as urgent and service be dispensed with in the first instance.
2. That this Honourable court be pleased to grant stay of execution of the judgment and/or decree delivered on 30th July 2025 and all the consequential orders arising therefrom pending the inter party hearing of this application.

3. That this Honourable Court be pleased to grant stay of execution of the Judgment and/or decree delivered on 30th July 2025 and all the consequential orders arising therefrom pending the hearing and determination of the instant Appeal.
4. Such other orders be made as are just and expedient in the interest of justice.
5. Costs of this application be in the cause.

It is based on the annexed affidavit of James Michugu Karanja and grounds that that Trial Court rendered it's now contested Judgment on the 30th July 2025. In the impugned Judgment the trial Court ordered the 3rd Respondent to cancel Appellants title over the property known as DONYO SABUK/KOMAROCK BLOCK 1/122258 measuring 2.66. Hectares which is procured at a purchase price of Ksh. 13,000,000 and directed the said 3rd Respondent to register the same in the 1st Respondents name. The said Court Judgment further directed the DCI to not only investigate but also to arrest and charge the directors of the Appellant herein with the offence of fraud and other related offences. It further condemned the Appellant/Applicant to not only pay the cost of the 1st Respondent herein but also pay the costs to the 2nd Respondent. That the Appellant/Applicant being not satisfied by the said Judgment and has proffered an appeal against the said judgment for among other reason the fact that the trial Court inferred fraud on the Appellant herein when the 1st Respondent who was the Plaintiff in the primary suit

never pleaded, particularized and/or led evidence to prove. The Trial Court cancelled the Appellants title simply because it had the power to do so and not because the Respondent had pleaded, particularized and proven fraud, illegality or corrupt scheme in a judicially acceptable manner and/or in a manner that could surmount the threshold set out in section 26 of the land Registration Act. The Trial Court issued unconstitutional and illegal orders to the independent constitutional offices of the DCI and DPP requiring them to investigate and charge the Appellant with the specific offence of fraud. The trial Court framed and determined extraneous issues that neither emanated from the pleadings nor from the evidence adduced in Court.

That the Applicant is justifiably apprehensive that unless the Court grants an order of stay, then its directors will not only lose their liberty but it equally will lose the suit property in addition to the costs being executed against it. Suffice to note that the liberty of the directors and the suit property form the substratum of the instant appeal. This Application has been brought without any delay and it is deserving of the consideration of this Honourable Court.

The 1st and 2nd Respondent stated that the Applicant has not demonstrated what loss would be occasioned if stay of execution is not granted. That they have not shown any willingness to provide security for the performance of any decree of

order that may be binding to them. That the the application has not met the threshold for grant of stay of execution.

I have considered the application 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.”

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.”

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.

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.”*

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.....”

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”

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.”

I find that the Applicant is not guilty of laches as judgement was delivered on 30th July 2025 and this application is dated 14th August 2025. The Applicant submitted that the 1st Respondent herein neither pleaded or adduced any evidence of fraud. That the Trial Court judgment is inconsistent to the extent that the reasoning and findings of the court are not inconstant with the final orders of the Court. The Court never paid regards to the fact that the 2nd Respondent had provided proof that the 1st Respondent had initially filed a similar suit which was dismissed by the Hon Justice Angote and that the instant suit was therefore res judicata. Further that the suit was in any event moot by dint of Section 6 of the Land Control Act. Whereas the Appellant/Applicant has an arguable appeal with good prospects of success the 1st and 2nd Respondent have already began executing the judgment and orders of the ruling delivered on the 30th July 2025. Further thereto the Appellant herein is apprehensive that at any time now, its directors can be arrested by the DCI and charged in court with the offence of fraud as decreed by the trial Court. As at now the 2nd Respondent which was awarded undeservingly awarded costs of the suit has already obtained a certificate of costs will obviously soon be seeking to execute the same against the Appellant herein.

I find that the grounds of appeal raised in the application 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 it as prayed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF MARCH 2026.

N.A. MATHEKA

JUDGE