



**Rotich (Suing as the Legal Representative of the Estate of the Late Reuben Boit) v Cheronno  
(Sued as the Legal Representative of the Estate of Francis Rerimoi Koros) (Environment  
and Land Appeal E012 of 2025) [2026] KEELC 1866 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1866 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT AND LAND APPEAL E012 OF 2025**

**L WAITHAKA, J  
MARCH 16, 2026**

**BETWEEN**

**ESTHER JEPTARUS ROTICH (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF THE LATE REUBEN BOIT) ..... APPELLANT**

**AND**

**JANE CHERONO (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE  
OF FRANCIS RERIMOI KOROS) ..... RESPONDENT**

*(Being an appeal from the entire judgment of Hon. P. KOSKEY SPM  
delivered on 7<sup>th</sup> August 2025 in Kabarnet MCELC21 of 2017)*

**RULING**

1. This ruling is in respect of notice of motion dated 3<sup>rd</sup> October 2025. In the motion, the appellant/applicant seeks the following orders:-
  - a. Spent
  - b. Spent
  - c. Stay of execution of the entire judgment of Hon. P. Koskey SPM delivered on 7<sup>th</sup> August, 2025 in Kabarnet MCELC 21/2017-Esther Jeptarus Rotich & 2 others vs. Jane Cheronno pending the hearing and determination of the appeal;
  - d. Further orders as this court may deem just and reasonable;
  - e. Cost of the application be provided for.
2. The application is premised on the grounds on its face and supported by the affidavit of the applicant, Esther Jeptarus Rotich, in which the grounds on the face of the application are reiterated.



3. The grounds taken up in support of the application are that the trial court directed the applicant to facilitate transfer of the suit property, Kabarnet Township/436, to the respondent by executing all requisite documents within a period of 60 days from the date of the judgment; that being dissatisfied with the judgment of the trial court, the applicant filed an appeal to this court against the entire judgment; that the appeal is arguable and has high chances of success and that the suit property as well as its title, ought to be preserved pending the outcome of the appeal.
4. Arguing that unless the orders sought are granted, her appeal may be rendered nugatory and that she stands to suffer irreparable and/or substantial loss, the applicant urges this court to grant her the orders sought.
5. In reply to and in opposition to the application, the respondent vide a replying affidavit, sworn on 10<sup>th</sup> November, 2025 has inter alia deponed as follows:-

“ .....

3. ....the applicant has not proven in his application the requirements for granting of orders of stay of execution;
4. ....the applicant has not proven willingness and/or capacity to provide such security for costs as the court may deem fit
5. ....contrary to the applicant’s assertions in her application, it is the Respondent herein who will suffer substantial loss in the event the application is allowed;
6. ....that it is the Estate of the late Francis Rerimoi, the Respondent herein, that is in current occupation and possession and has been in the said parcel of land for the past 25 years and above;
7. ...it is in fact the Estate of the Respondent herein that will suffer great loss if the Applicant herein disposes off the suit property despite having the judgment in its favour and being in current occupation which will seriously undermine the judgment;
8. ...there is no possible security that can be issued by the Applicant herein to mitigate the loss that could be suffered by the Respondent in the event that the said property is disposed of.
9. That the Respondent has no intention or need whatsoever to dispose of the suit property considering that the same has been in their occupation for over 25 years.
10. That it is far from the truth that the Respondent shall not suffer any prejudice since it is the Respondent’s Estate that will be greatly disadvantaged first from being denied the fruits of its judgment and secondly by risking loss of property that they have invested on for years.
11. That in the very least and without prejudice to the above, if at all the court finds in favour of the application, there should be an order of inhibition as to the dealings on the land as security and the title should be deposited in court. ...”



6. In a rejoinder, the applicant filed a supplementary affidavit sworn on 19<sup>th</sup> November 2025, in which she has deponed as follows:-

“ .....

3. That the Respondent’s presumption that I intend to dispose of the suit property or in any way deal with it to the detriment of the proceedings is unfounded, untrue and purely speculative;
  4. That if I had any intention of dealing adversely with the suit parcel, I would have done so during the pendency of the matter before the lower court;
  5. That the Respondent shall not suffer prejudice if the judgment of Honourable P. Koskey SRM delivered on 7<sup>th</sup> August 2025 in Kabarnet MCELC/21/2017;
  6. That the Respondent has not attached anything to show that she has made significant investment on the suit parcel as alleged;
  7. That the Respondent has no proprietary rights over the parcel and therefore her current possession and occupation thereof are unlawful and illegal.
  8. That I am ready and willing to abide by any condition whatsoever issued by this Honourable Court....”
7. Pursuant to directions given on 12<sup>th</sup> November 2025, the application was disposed of by way of written submissions.
8. When the application was called for mention to confirm filing of submissions on 1<sup>st</sup> December 2025, Counsel for the respondent informed the court that the respondent had not filed submissions and that he would rely on her replying affidavit.
9. In her submissions dated 20<sup>th</sup> November 2025, the applicant makes reference to the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules and to several decided cases and submits that she has met the requirements for being granted an order of stay of execution pending the hearing and determination of the appeal. In that regard, she submits that the application was made timeously, barely two months after the judgment was delivered; that she has demonstrated that unless stay is granted she may suffer substantial loss in that if the property is transferred to the respondents and she wins the appeal, she will incur expenses in re-transferring the suit property to herself. The applicant is also apprehensive that if the property is transferred to the respondent, they may distribute it or dispose it to the beneficiaries of the Estate of the late Francis Rerimoi Koros.
10. On the issue of costs, the applicant reiterates her averment that she is willing to provide such security as may be ordered by the Court.
11. I have carefully read the grounds taken up by the applicant in support of her application for stay of execution pending appeal, the response/opposition by the respondents and the submissions by the applicant in support of the application.
12. I find the sole issue for the court’s determination to be whether the applicant has made up a case for being granted the orders sought or any of them. Subject to the outcome of the foregoing, what order should the court make.



13. Its trite law that for an applicant to be granted an Order of stay of execution pending appeal, he/she must satisfy the conditions set out in Order 42 rule 6(2) of the Civil Procedure Rules, 2010. That legal position has been stated and restated in numerous decided authorities. The conditions are as follows:-
  - i. The court must be satisfied that substantial loss may result to the applicant unless the order is made;
  - ii. The application has been made without unreasonable delay and
  - iii. Such security as the court orders for the undue performance of such decree or order as may ultimately be binding on him has been given by the applicant.
14. It is also trite law that an order of stay of execution pending appeal is granted at the discretion of the court. In exercise of the discretion vested in it, the court seeks to balance the interest of the successful litigant/decree holder and those of the appellant/applicant.
15. In none monetary decrees like the one forming the subject of the instant application, the court is minded to preserve the subject matter of the appeal, the land, so that it is not dealt by the parties in a manner that may be prejudicial to the successful party to the appeal.
16. In the circumstances of this case/application before me, the suit property is registered in the name of the applicant. It is not in dispute that it is the respondents who are in use and occupation of the suit property. If the suit property is transferred to the respondents before the appeal is heard and determined, nothing stops the respondents from distributing it amongst the beneficiaries of the Estate of Francis Rerimoi Koros thereby taking it out of reach of the applicant and/or requiring the applicant to start a process of getting it back to her self. That is not desirable.
17. In view of the foregoing, the suit property ought to be preserved by maintaining the status quo which obtained before the judgment appealed was delivered, which status can only be maintained by granting an order of stay of execution of the order requiring the applicant to transfer the suit property to the respondent pending the hearing and determination of the appeal.
18. As the applicant has expressed willingness to provide such security as may be ordered by the court, I direct the applicant to, within 30 days from the date of delivery of this ruling, deposit KShs.100,000/- in an interest earning bank account to be opened in the joint names of the advocate for the applicant and the advocate for the respondent. If the applicant does not comply with the order for security within the time herein given, the application for stay shall be deemed to have been denied and dismissed with costs to the respondent.
19. Subject to compliance with the order for security given herein above, the cost of the application shall abide the outcome of the appeal.
20. The upshot of the foregoing is that I find the notice of motion application dated 3<sup>rd</sup> October, 2025 to be merited and I allow it to the extent contemplated in this ruling.
21. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT BUSIA THIS 16<sup>TH</sup> DAY OF MARCH, 2026.**

**L. N. WAITHAKA**

**JUDGE**

In the presence of ;

Mr Njoroge for the Appellant



Ms Salim for the Respondent  
Court Assistant; Tracy

