

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCLA E082 OF 2025

STANLEY SURPAN

....APPELLANT

VERSUS

PARTAARI NKIROORARESPONDENT

RULING

*(In respect of the Appellant's motion dated 17th December, 2025 seeking
stay of execution pending appeal)*

Introduction

1. This ruling determines the Appellant's Notice of Motion dated 17th December 2025. The application seeks an order for stay of execution of the ruling and orders delivered on 20th November 2025 in Kajiado MCDLT No. 7 of 2011, including the amended decree issued therefrom, pending the hearing and determination of this appeal. The Applicant further prays that the costs of the application be in the cause.
2. Before delving into the merits of the application, it is necessary to clarify the capacity of the Appellant. The primary records and the lower court proceedings name "Stanley Surpan" as the Defendant/Respondent. The Supplementary Record of Appeal indicates that Stanley Surpan Ole Nkuruna passed away on 2nd August

2014. The Supporting Affidavit to the present application is sworn by Stephen Lemitei Surpan. In the affidavit, Stephen Lemitei Surpan explicitly deposes that he is the legal representative of the Estate of Stanley Surpan Ole Nkuruna and is competent to swear the affidavit. Furthermore, the lower court's ruling acknowledges that the proceedings affect the estate of Stanley Surpan. Consequently, the court recognizes Stephen Lemitei Surpan as the lawful personal representative of the Estate of the deceased Appellant.

3. The application is premised on the grounds that if a stay of execution is not issued against the impugned ruling, irreparable harm and loss shall be occasioned to the Applicant since the impugned ruling ordered the abolition of a registered land title, KAJIADO/PURKO/666. The Applicant contends that this action, unless stayed, will render the intended appeal nugatory, despite raising arguable points of law concerning jurisdiction and the abuse of review powers. Furthermore, the Applicant asserts that the application was filed promptly and without unreasonable delay.
4. In the Supporting Affidavit sworn on 17th December 2025, Stephen Lemitei Surpan asserts that the execution of the impugned order entails the survey, mutation, cancellation of title, and alteration of the land register.
5. The Respondent, Partaari Nkiroora, vehemently opposes the application through a Replying Affidavit sworn on 30th January 2026. He seeks its dismissal with costs, characterizing it as misconceived, incompetent, and an abuse of the court process for failing to meet the

required threshold for a stay pending appeal. The Respondent asserts that the Applicant's sole intention is to delay, frustrate, and obstruct the execution of a lawful order issued in his favor.

6. The Respondent further argues that the Applicant has not disclosed or demonstrated any substantial loss, specific prejudice, financial ruin, or irreversible harm he is likely to suffer unless the orders of stay are granted. The Respondent alleges that the Applicant has not proven an inability on the part of the Respondent to restore the land to its present condition should the appeal succeed, nor has the Applicant explained the alleged delay in lodging the application. Finally, the Respondent maintains that the Applicant has failed to offer security as obligated under Order 42 Rule 6(2)(b) of the Civil Procedure Rules, arguing that the balance of convenience tilts in favor of allowing execution to ensure the finality of litigation.

Court Directions

7. When the application came up for hearing on 3rd February 2026, the court directed counsel for both parties to file their respective submissions. The Applicant complied with this directive, and the court has considered the submissions filed. The Respondent failed to file submissions within the timelines prescribed by the court. The court will nevertheless proceed to determine the Appellant's Notice of Motion dated 17th December 2025 on its merits.

Determination

8. The sole issue for determination is whether the Applicant has met the legal threshold to warrant issuance of an order of stay of execution of

the ruling delivered by Hon. E. M. Kagoni (SPM) on 20th November 2025, pending the hearing and determination of the appeal.

9. The jurisdiction to grant a stay of execution pending appeal is anchored on Order 42 Rule 6(2) of the Civil Procedure Rules, which sets out three conjunctive conditions that an applicant must satisfy: first, that substantial loss may result to the Applicant unless the order is made; second, that the application has been made without unreasonable delay; and third, that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the Applicant has been given.
10. The Court of Appeal comprehensively discussed this threshold in Wachira v Weru & 3 others [2026] KECA 122 (KLR), stating that:
"For an applicant to succeed in an application for stay of execution pending appeal or for an injunction he must firstly show that the appeal or intended appeal, as the case may be, is arguable which is the same as saying that the same is not frivolous. Such an applicant must in addition show that the appeal would be rendered nugatory absent stay."
11. Further, on the interplay between an arguable appeal and the nugatory aspect, the Court of Appeal in National Bank of Kenya Ltd vs Praedium Realtors Ltd & 3 others [2026] KECA 234 (KLR) held that:
"Two other points are worthy emphasizing as regards an arguable appeal. An applicant is not obliged to present a multiplicity of arguable issues before the appeal can be deemed arguable. Even one

bona fide issue deserving of determination by the Court will suffice. Secondly, to constitute an arguable appeal, the appeal must not necessarily succeed when it is ultimately heard. All that the applicant has to satisfy the Court is that the appeal is not frivolous. As regards whether the appeal will be rendered nugatory, the concern of the Court is to ensure that should it succeed, it will not end up as a mere pyrrhic victory or a paper judgment because of intervening circumstances which cannot be undone or are only capable of reversal at considerable cost or inconvenience. Whether or not an appeal will be rendered nugatory depends on the peculiar circumstances of each case."

Is the Appeal Arguable?

12. The Appellant's Memorandum of Appeal faults the Learned Magistrate for adjudicating upon a matter allegedly beyond the court's pecuniary jurisdiction, determining a statute-barred claim, overextending review powers under Section 80 of the Civil Procedure Act twelve years after the fact, and substantially varying an adopted Tribunal award.
13. The impugned ruling fundamentally altered the decree to expressly order that land parcel number KAJIADO/PURKO/666 be abolished and wholly added to KAJIADO/PURKO/399. I find that the challenge against the lower court's jurisdiction to vary a decree in a manner that extinguishes a registered proprietary right raises *bona fide*, triable issues of law. The appeal is therefore arguable.

Will the Appeal be rendered Nugatory / Will Substantial Loss Occur?

14. The execution of the impugned ruling demands the physical and legal consolidation of land, mutation, and the absolute cancellation of the title deed for KAJIADO/PURKO/666. Land is a unique asset. The alteration of the land register and the abolition of a title constitute intervening circumstances that are highly complex to reverse.

15. Should the execution proceed and the appeal ultimately succeed, the Appellant's victory would be a mere paper judgment, requiring immense cost and inconvenience to reconstruct the abolished title. Therefore, the Applicant has successfully demonstrated that substantial and irreparable loss will occur if the stay is denied.

Was the application brought without Unreasonable Delay?

16. The impugned ruling was delivered on 20th November 2025. The record indicates that the lower court granted a 30-day stay of execution on the same date. The Applicant filed the present Notice of Motion before this court on 17th December 2025.

17. Filing an application for stay within 27 days of the ruling, and well within the interim stay period granted by the trial court, demonstrates utmost promptness. The Respondent's assertions regarding inordinate delay are factually unfounded.

Security for Due Performance

18. The final limb under Order 42 Rule 6(2) of the Civil Procedure Rules requires the provision of security. The Respondent correctly notes that no specific offer of security has been tendered by the Applicant. However, the failure to offer security upfront is not necessarily fatal to

the application; it remains the prerogative of the court to quantify and order appropriate security.

19. Given that the subject matter is a registered parcel of land whose title is currently preserved, the property itself stands as substantial security.

20. Having evaluated the facts against the legal threshold, I find that the Applicant has satisfied the conditions for the grant of a stay of execution pending appeal.

17. Consequently, I allow the Notice of Motion dated 17th December 2025 in the following terms:

A. THAT an order of stay of execution of the ruling and orders delivered on 20th November 2025 in Kajiado MCDLT No. 7 of 2011, and the amended decree issued therefrom, is hereby granted, pending the hearing and determination of this appeal.

B. THAT the costs of this Application shall abide the outcome of the appeal.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 24th Day of March 2026

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Kariuki for the 2nd Respondent

Ms. Tabitha Muthoni for the Appellant

N/A by the 1st & 3rd Respondents

Court Assistant: Mercy

M.D. MWANGI
JUDGE

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