

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC NO. 102 OF 2019
(FORMERLY 182 OF 2010)

TITUS KIRAGU.....PLAINTIFF/
RESPONDENT

VERSUS

THE COMMISSIONER OF
LANDS.....1ST DEFENDANT/RESPONDENT
LAWRENCE MAINA
MWANGI.....2ND DEFENDANT/APPLICANT
KINARU KIMAIGA NDUBI.....3RD DEFENDANT/ RESPONDENT
SALIM GULAM HUSSEIN
GILANI.....4TH DEFENDANT/ RESPONDENT
JOHNSON GACAU KIBERA.....5TH DEFENDANT/RESPONDENT
ATTORNEY GENERAL.....6TH DEFENDANT/ RESPONDENT
JOSEPH WAWERU
KINYANJUI.....7TH DEFENDANT/ RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 31st October, 2025, by the 2nd Defendant/Applicant seeking the following orders:
 - a) *Spent.*
 - b) *Spent.*
 - c) *Spent.*
 - d) *THAT pending the hearing and determination of the appeal this Honourable Court be pleased to stay execution of the judgment issued on 11th November, 2025 the orders arising therefrom and all other consequential orders against the Applicant.*
 - e) *THAT costs of this application do abide the outcome of the appeal.*

2. The application is based on the supporting affidavit of Lawrence Maina Mwangi, the 2nd Defendant/Applicant, who deponed that judgment was delivered on 11th November, 2025, in favour of the Plaintiff, for the cancellation of his title NAKURU MUNICIPALITY BLOCK 18/59, and to be registered in the Plaintiff/ Respondent's name.
3. He further deponed that he was aggrieved by the judgment and therefore preferred an appeal. He stated that he was apprehensive that the Plaintiff would move with speed to execute the judgment and evict him from the suit parcel of land.
4. The Applicant also deponed that he filed the application without delay and if the stay orders are not granted, the appeal will be rendered nugatory, and further that he is willing to abide by any conditions given by the court.

RESPONDENT'S RESPONSE

5. The Plaintiff/Respondent filed grounds of opposition dated 2nd December, 2025, on the following grounds:
 - a) *The Application does not fulfil the threshold set out in Order 42 Rule 6 (2) for the granting of a stay of execution.*
 - b) *The Applicant (2nd Defendant) does not hold good title to the Plaintiff's property and he will not suffer any loss whatsoever as what he purports to hold is a forgery that does not give him any rights to the Plaintiff's land.*

- c) The Applicant is not in possession of the Plaintiff's land (the suit land) There cannot therefore, be any apprehension on his part of being evicted from land that he does not occupy, he shall not suffer any loss whatsoever if the stay order is not issued.*
- d) The Applicant has brought this application with unclean hands as he seeks to dupe the Honourable Court that he is in possession of the suit land, for purposes of obtaining stay of execution through misrepresentation, when in fact, it is the Plaintiff who is rightly in possession of his land.*
- e) That the Plaintiff's property (the suit land) is undeveloped, there are no buildings or developments belonging to the Applicant therein that are capable of demolition. The Applicant is seeking to misrepresent this Honourable Court in order to obtain an undeserved order of stay of execution. The fact is that the Plaintiff has possession of the property and has his guards who live in a makeshift guardhouse on his said property.*
- f) The Application as filed is procedurally defective and bad in law, the attached Memorandum of Appeal is unsigned and undated and it contravenes the provisions of Order 41 (1) of the Civil Procedure Rules.*

g) There is no sufficient cause whatsoever that has been shown by the Applicant to warrant a stay of execution of this Honourable Court's orders.

6. The Plaintiff/Respondent also filed his replying affidavit dated 26th January, 2026, where he averred that the 2nd Defendant/Applicant had not acquired a good title to the suit property and that he was the one in possession of the suit property and not the Applicant as alleged.
7. It was the Respondent's disposition that the Applicant will not suffer any loss if the stay orders are not granted as he cannot be evicted from land which he does not occupy. The Respondent also stated that litigation must come to an end considering the present matter has been in court for more than 15 years, and he ought not be deprived of the fruits of his judgment. He urged the court to dismiss the application with costs, as it does not meet the mandatory conditions for a stay of execution under Order 42 Rule 6(2).
8. The Applicant in response filed a supplementary affidavit sworn on 10th February, 2026, and deponed that he stands to suffer loss of the cancellation of his title deed if the stay orders are not granted. Further, the restoration of the title after execution is not guaranteed, especially where third-party rights are involved.

APPLICANT'S SUBMISSIONS

9. Counsel for the Applicant filed submissions dated 10th February 2026, and identified two issues for determination, as to whether the Applicant has demonstrated substantial loss and whether the Applicant has met the threshold under Order 42 Rule 6(2) of the Civil Procedure Rules.
10. On the first issue, counsel submitted that the execution of the judgment would result in cancellation and extinction of the Applicant's proprietary rights and title which is irreversible, and relied on the case of **James Wangalwa & Another V Agnes Naliaka Cheseto [2012] eKLR**.
11. Mr. Maina submitted that the cancellation of the title goes to the root of proprietary rights protected under Article 40 of the Constitution and once effected, it places the subject matter beyond the reach of the appellate court, and relied on the case of **Wanjohi V Issac [2025] KEHC 6794 (KLR)**. Further that the Applicant need not be in possession of the suit parcel to demonstrate substantial loss.
12. Counsel relied on the case of **Butt V Rent Restriction Tribunal [1982] KLR 417** and submitted that there is a need to preserve the legal status of the title and not physical possession. Counsel similarly, stated that the Applicant filed the application 4 days after the delivery of the judgment, and cited the case of **Jasbir Mohasen Ali & Another V Pricillah Boit & Another [2014] KEELC 132 (KLR)**.
13. It was Mr. Maina's submission that the Applicant has expressed his willingness to abide by any condition the court may impose for the due

performance of the decree and relied on the cases of **Halai & Another V Thornton & Turpin (1963) Ltd [1990] KLR 365** and **Samvir Trustee Limited V Guardian Bank [2007] eKLR**, and urged the court to allow the application as prayed.

RESPONDENT’S SUBMISSIONS

14. Counsel for the Plaintiff/Respondent filed submissions dated 3rd March 2026, and identified two issues for determination:
 - a) *Why the Applicant is undeserving of any stay orders*
 - b) *Who should bear the costs of this application?*

15. On the first issue, counsel relied on Order 42 Rule 6(1) (2) of the Civil Procedure Rules and submitted that the Applicant has not met the three conditions for the grant of stay of execution. Counsel relied on the case of **George Masibayi Wafula V Richard Wafula Masinde [2022] eKLR** which was cited with approval in the case of **Hon, Attorney General V Law Society of Kenya & Another Civil Appeal No 133 of 2011 [2013] eKLR**, and submitted that the Applicant has not shown any sufficient cause why he should be granted the stay orders.

16. Counsel further submitted that the Applicant does not face any imminent eviction as he has concealed information from this court that he is not in possession of the suit property and relied on the case of **Mehu Mwai & Another V John Ndegwa Wachira [2015] eKLR**.

17. On the second condition of substantial loss, it was counsel's submission that the Applicant will not be prejudiced or suffer any substantial loss since he does not hold a good title to the suit property, and relied on the cases of **Machira T/A Machira & Co. Advocates V East African Standard (NO. 2) [2002] KLR 63 and RWW V EKW [2019] eKLR.**
18. On the third condition of security for costs, Ms. Mbanya (SC) relied on the case of **Arun C. Sharma V Ashana Rairundalia t/a Rairundalia & Co. Advocates & 2 Others [2014] eKLR** and submitted that the Applicant has not furnished any security for the due performance of the decree. Further, that litigation ought to come to an end and that this matter has been in court for more than 15 years and the Plaintiff/Respondent being a senior citizen in his nineties, should be allowed to enjoy the fruit of his judgment in his sunset years. Counsel urged the court to dismiss the application with costs to the Respondent.

ANALYSIS AND DETERMINATION

19. The issue for determination is whether the Applicant has met the threshold for the grant of stay of execution as provided for under Order 42 Rule 6 of the Civil Procedure Rules.

Order 42 Rule 6 (2) provides as follows:

***“No order for stay of execution shall be made under subrule (1) unless—
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***

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.”

20. Similarly, in the case of **SEAMAN BUILDING & CIVIL ENGINEERING LTD –VS- JUSTUS MAKOKHA NASONGO [2020] eKLR**, the court held as follows:

“Hence, under our established jurisprudence, to be successful in an application for stay, an applicant has to satisfy a four-part test. He must demonstrate that:

- a. *The appeal it has filed is arguable.*
- b. *It is likely to suffer substantial loss unless the order is made. Differently put, it must demonstrate that the appeal will be rendered nugatory if the stay is not granted.*
- c. *The application was made without unreasonable delay, and*
- d. *It has given or is willing to give such security as the court may order for the due performance of the decree.”*

21. The Applicant filed this application on 15th November, 2025, and the Notice of Appeal on 11th November, 2025 while the judgment was delivered on 11th November, 2025. The issue as to whether an application has been filed timeously, is one of the limbs to be satisfied by the Applicant, and if there is any delay, it is incumbent upon the Applicant to explain the reasons for the delay.

22. In the case of **Utalii Transport Company Ltd & 3 Others -vs- NIC Bank Ltd & Another 2014 eKLR** the Court had this to say:

“Whereas there is no precise measure of what amounts to inordinate delay and whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case the subject matter of the case, the nature of the case, the explanation given for the delay and so on and so forth.

Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable, conclusion that it is inordinate and therefore caution is advised for courts not to take the word “inordinate” in its dictionary measuring but in the sense of excessive as compared to normality.”

23. The timelines stated above show that the Applicant filed the application without undue delay.

24. The Applicant stated that he has an arguable appeal with high chances of success, and that it will be rendered nugatory if an order of stay of execution is not granted. The fact that a party has a strong ground of appeal is not in itself a ticket to getting a stay order as was held in the case of **Carter & Sons Ltd. V. Deposit Protection Fund Board & Two 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 result 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.”

25. On whether the Applicant has demonstrated that he will suffer substantial loss in the event that stay of execution is not granted, the Applicant argued that his title stood to be cancelled which would be an irreversible action rendering the appeal nugatory. The Applicant had also claimed that he risks being evicted from the suit land as he is in possession. The Respondent filed a Supplementary affidavit, which debunked the Applicant's allegation that he is in possession of the suit property, of which the Applicant confirmed that he is not in physical possession of the land.

26. In the Court of Appeal case of **Charles Wahome Gethi v Angela Wairimu Gethi. Civil Appl. No. 302 of 2007 [2008] eKLR**, it was *held* that:

"... it is not enough for the applicants to say that they live or reside on the suit land and that they will suffer substantial loss. The Applicants must go further and show the substantial loss that the applicants stand to suffer if the Respondent executes the decree in this suit against them"

27. The Applicant's fear of being evicted is unfounded as he is not in occupation of the suit land. The Applicant has a right of Appeal which he is exercising, having filed a Notice of Appeal and an Appeal in the Court of Appeal.

28. In the case of **Siegfried Busch V MCSK [2013] eKLR**, the court held as follows:

"A superior court to which an application has been made must recognize and acknowledge the possibility that its decision for refusal to grant a stay of execution could be reversed on appeal. It

would be best in those circumstances to preserve the status quo so as not to render an appeal nugatory. Even in doing so, the court should weigh this against the success of a litigant who should not be deprived of the fruits of his judgment...”

29. The court must also be cognizant of the fact that there are two parties involved, that is the Applicant and the successful litigant who is being stopped or delayed from enjoying the fruits of his/her judgment. The court must balance the rights of the parties by exercising the discretion judiciously as was held in the case of **Kenya Commercial Bank Limited V Sun City Properties Limited & 5 Others [2012] eKLR**, the court held as follows:

“in an application for stay, there are always two competing interests that must be considered. These are that a successful litigant should not be denied the fruits of his judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should always be balanced in a bid to balance the two competing interests, the Courts usually make an Order for suitable security for the due performance of the Decree as the parties wait for the outcome of the Appeal. I do not see, why the same should not be applicable in this case.”

30. The Applicant stated that he is ready and willing to abide by reasonable conditions set by the court for the due performance of the decree. In the interest of justice, I will grant a conditional stay of execution, and order that the Applicant deposit Kshs. 300,000/= in a joint interest earning account of

the Advocates on record for the Applicant and the Plaintiff/Respondent within the next 30 days failure to which the stay lapses.

31. The costs of this application shall abide by the outcome of the appeal.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH
DAY OF APRIL 2026.**

**M. A. ODENY
JUDGE**