

**REPUBLIC OF KENYA**

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

**ELCL APPEAL CASE NO. E001 OF 2026**

**LUCY MUTHONI KARANJA.....**  
**.....APPELLANT**

**VERSUS**

**JAMES HARRY NDIRANGU.....**  
**RESPONDENT**

**RULING**

1. Before me for determination is a Chamber Summons dated 5<sup>th</sup> January 2026, brought under the provisions of Rule 3(1) of The High Court Practice and Procedure (Vacation) Rules, Section 5 of the Judicature Act, Sections 1A, 1B, and 3A of the Civil Procedure Act, and Order 42 Rule 6 of the Civil Procedure Rules, wherein the Appellant has sought a stay of execution of the judgement and decree delivered on 9<sup>th</sup> December 2025, pending the hearing and determination of the appeal, and for costs to be awarded.
2. The Chamber Summons is based on the grounds stated on its face and the Supporting Affidavit of the same date, sworn by Lucy Muthoni Karanja, the Appellant, who deposed that the impugned judgement was delivered on 9<sup>th</sup> December, 2025, in favour of the Respondent. She further stated that upon the delivery of the judgment, the trial court, by consent of the parties, granted a stay of execution for thirty (30) days, which lapsed on 9<sup>th</sup> January, 2026.
3. That she was dissatisfied with the entire judgment and instructed her advocates to file an appeal against it, where he requested certified copies of the trial court's proceedings and judgment. That, unless the Honourable Court grants a stay of execution, the Respondent may deal with, dispose of, or otherwise interfere with the suit property, thereby rendering the intended appeal nugatory.
4. That the intended appeal raises serious and arguable issues of law, including but not limited to the legal effect of registered title under the Land Registration Act, the absence of fraud or misrepresentation, and the

improper imposition of an implied or resulting trust. The trial court failed to consider material evidence on the record, including sworn testimony regarding her financial circumstances and the source of funds for the suit property.

5. That she had at all material times allowed the Respondent to remain on the suit property and had maintained the status quo; therefore, no prejudice would be caused to the Respondent if the stay was granted. That, whereas she stood to suffer substantial loss if the stay was not granted, the Respondent would suffer no prejudice. She thus deposed that it was just, fair, and in the interest of justice that the Honourable Court grant the orders sought.
6. In response to and in opposition to the Appellant's Application, the Respondent, in his Replying Affidavit dated 28<sup>th</sup> January 2026, stated that the application was misconceived, untenable, and devoid of merit, and should be dismissed with costs. He argued that the Applicant had not shown how the appeal would be rendered nugatory if the order of stay of execution were not granted. He contended that the Applicant had not demonstrated the substantial loss she would suffer if the said orders were not granted.
7. That, contrary to the Applicant's allegations, the trial court had considered all the facts, the provisions of the law, and the evidence presented in court when reaching its decision, thus there was a high chance of the court upholding the said decision. The Applicant had not met the well-established principles to justify the granting of a stay of execution pending appeal, the application dated 5<sup>th</sup> January 2026 lacks merit and ought to be dismissed with costs.
8. The Application was disposed of by way of written submissions.

### **Applicant's Submissions.**

9. In her submissions dated 16<sup>th</sup> February, 2026, supporting her Chamber Summons dated 5<sup>th</sup> January, 2026, the Applicant relied on the provisions

of Order 42 Rule 6 of the Civil Procedure Rules and the decided cases of **Kenya Shell Limited v Benjamin Karuga Kibigu & Another [1986] KLR**, **Absalom Dova v Tarbo Transporters [2013] eKLR**, and **RWW v EKW [2019] eKLR** to argue that refusing to grant a stay would expose her to an immediate and real risk where the suit property might be transferred, sold, or otherwise disposed of to third parties. That such a scenario would therefore render the appeal entirely nugatory, depriving her of the very relief she sought to protect.

10. That she had a deep personal attachment to the suit property; the land was far more than just a financial asset, serving as a home of profound personal and family significance. Consequently, no amount of monetary compensation could replace it, nor could another piece of land serve as a true substitute, as no two parcels of land are ever identical in location, history, or character.
11. She also submitted that throughout the trial and at all material times, even before the judgment had been delivered, she had allowed the Respondent to remain peacefully on the land and intended for that arrangement to continue until the appeal was determined, thereby ensuring the Respondent suffered no disadvantage whilst the appeal was pending. Furthermore, she was willing to deposit the title deed with the court as security for the proper performance of any decree or order that may ultimately be binding on her, providing further assurance that the Respondent's rights under the judgment were fully protected, while still safeguarding her against irreparable loss.
12. On the principle governing substantial loss, she relied on the decided cases of **Tropical Commodity Suppliers Ltd & Other v International Credit Bank Ltd (in liquidation) [2004] 2 EA 331**, **Siegfried Busch v MCKS [2013] eKLR**, and **RWW v EKW** (supra) to argue that, in this case, she would suffer real, substantial, and irreparable loss if a stay of execution was not granted. She also contended that the Respondent would not suffer prejudice since the status quo had been maintained

throughout, including during the trial and execution of the judgement. Consequently, she submitted that granting the stay was just, equitable, and necessary, ensuring that the appeal, if successful, was not rendered meaningless, whilst fully protecting the Respondent's rights.

13. The application was made without unreasonable delay, as the judgment in the matter was delivered on 9<sup>th</sup> December 2025, and the trial court had granted a 30-day stay of execution, which expired on 9<sup>th</sup> January 2026. The application was filed on 5<sup>th</sup> January 2026, before the stay orders lapsed. She acted promptly and diligently, fully complying with the procedural requirements under the provisions of Order 42 Rule 6(2)(a). Therefore, there was no undue delay, and the application is properly before the Court. She also sought costs.

### **Respondent's Submission**

14. In response, the Respondent, through his submissions dated 13<sup>th</sup> February 2026, based his argument on the principles governing the grant of stay of execution pending appeal as stipulated under the provisions of Order 42 Rule 6 of the Civil Procedure Rules. He argued that the Applicant had not proved any of the prescribed principles and, therefore, her application lacked merit. He submitted that, while recognizing the court's broad discretion, the same must be exercised judiciously. The Respondent contended that the Applicant's intention was to delay the enforcement of the judgment in his favour and placed reliance on the decided case of **Njuguna v Magichu & 3 others [2003] eKLR**.

15. It was his submission that the Applicant had not met the well-established principles for granting the prayers sought; hence, the instant application was an abuse of the Court process, as it lacked any merit and should be dismissed with costs.

### **Determination.**

16. Having considered the application before the court herein, the opposition thereto, the submissions by both parties, the authorities cited, and the applicable law, the Applicant brings her application seeking an order from the court to stay the execution of the judgement and decree delivered on 9<sup>th</sup> December 2025, by the trial court in Naivasha Chief Magistrate's court, in Naivasha MCELC E051 of 2024, pending the hearing and determination of the appeal.
17. The Applicant lodges this application on the grounds that if the trial court's judgment or decree is executed, the Respondent might deal with, dispose of, or otherwise interfere with the suit property. This would render the intended appeal nugatory and cause her serious prejudice, as losing the land would result in "monumental loss" because it was more than just a financial asset; it served as a home of deep personal and family significance. Consequently, no amount of monetary compensation could substitute it. She fears that without a stay order, the Respondent might forcibly evict her. She contends that it is only just that the current situation be maintained until the Court of Appeal(sic) delivers a final determination.
18. The Respondent's response was that the trial court had considered all the facts, the provisions of the law, and the evidence presented in court when reaching its decision, thus there was a high chance of this court upholding the said decision. He argued that the Applicant's primary intention was to delay the enforcement of a judgment delivered in his favor.
19. He described the application as misconceived, untenable, and an abuse of the court process and concluded that the application is devoid of merit since the Applicant had not met the well-established principles for granting a stay of execution pending appeal. That the application should be dismissed with costs awarded to him.
20. The law concerning stay of execution pending Appeal is found in Order 42 Rule 6 of the Civil Procedure Rules, which stipulates as follows:

*'No Appeal or 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 application being made, to consider such application and to make such order thereon as may to it seem just, and 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 such order set aside.*

*(2) No order for stay of execution shall be made under subrule (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.'*

21. There are three conditions for granting of stay order pending Appeal under Order 42 Rule 6 (2) of the Civil Procedure Rules to wit:

- i. The Court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered;
- ii. The application is brought without undue delay and
- iii. 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.

22. I find two issues for determination arising therein namely:

- i. Whether the Applicant has satisfactorily discharged the conditions warranting the grant of stay of execution of decree pending Appeal.
- ii. What orders should this Court make?

23. For the Applicant to succeed in the present application, the onus was on her to satisfy the conditions as set down under Order 42 Rule 6 of the Civil Procedure Rules. Indeed, the purpose of a stay of execution is to preserve the substratum of the case. In the case of **Consolidated Marine. vs. Nampijja & Another, Civil App.No.93 of 1989 (Nairobi)**, the Court held that: -

*“The purpose of the application for stay of execution pending Appeal is to preserve the subject matter in dispute so that the right of the Appellant who is exercising his undoubted right of Appeal are safeguarded and the Appeal if successful is not rendered nugatory”.*

24. The Courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the Act or in the interpretation of any of its provisions, according to Section 1A (2) and 1B of the Civil Procedure Act.

25. It therefore follows that all the pre-overriding objective decisions must now be looked at in the light of the said provisions. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms, which are aimed at placing the parties before the Court on equal footing. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice.

26. On the first condition of proving that a substantial loss may result unless a stay order is made, it was incumbent upon the Applicant to demonstrate the kind of substantial loss she would suffer were the stay order not made in her favour.

27. The Applicant’s contention is that if the stay orders were not granted, she stood to suffer substantial loss in that the suit property was not merely a financial asset that can be replaced by money. She contended that the land serves as a home with profound personal and family

significance. Therefore, if the Respondent were to sell or transfer it, no amount of monetary compensation would be a true substitute. That without a stay, the Respondent would be free to deal with, dispose of, or otherwise interfere with the property. If the property were to be transferred to a third party before the appeal is heard, any future court victory would be nugatory as the court would no longer be able to restore the land to her. That execution of the judgment would essentially finalize a decision she claims was based on a legal error—specifically, the improper imposition of an implied or resulting trust—thereby resulting in the loss of her registered ownership rights under the *Land Registration Act*.

28. Indeed, in the case of **Mukuma v Abuoga (1988) KLR 645**, the court held as follows;

*“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”*

29. Although it is trite that the Court has to balance the interest of the Applicant who is seeking to preserve the status quo pending the hearing of the Appeal so that her Appeal is not rendered nugatory, and the interest of the Respondent, if any, is protected.

30. In this case, the impugned judgment held that the Appellant was to hold the suit land, being LR Gilgil/Gilgil block 1/8022, in trust for the Respondent, with the requirement that she executes all transfer documents necessary to re-transfer the property to the Respondent within 15 days.

31. This being the case, and while keeping in mind that the Respondent was and is still in possession of the suit premises, and further in exercising the court’s discretion, to always opt for the lower rather than the higher risk of injustice, I find that the Applicant has discharged the first condition of proving that substantial loss may result unless stay order is made.

32. Regarding the second condition, there is no dispute that although the impugned judgment was delivered on 9<sup>th</sup> December 2025, the Applicant filed the present application on 5<sup>th</sup> January 2026, nearly one month later. I find that the application was therefore filed without undue delay, and there is nothing further to add on this point.
33. On the last issue in relation to the requirement for security, Order 42 Rule 6 (2) (b) of the Civil Procedure Rules clearly states that the third condition an Applicant must meet to obtain a stay of execution order pending appeal is to provide security.
34. In the case of **Arun C. Sharma vs. Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others [2014] eKLR**, the court held that:

*“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor. Civil process is quite different because in civil process the judgment is like a debt hence the Applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”*

35. The Applicant has offered to deposit the title deed with the court as security for the proper performance of the decree, thereby balancing her competing rights and the Respondent's interests while an appeal is pending.
36. The core purpose of a security is to protect the fruits of the Judgment, by recognizing that a successful party should not be deprived of the benefits of their win without safeguards and ensuring that if the

Applicant /Appellant loses the appeal, there is a guarantee the judgment can be enforced. It prevents the Appellant from using the stay of execution as a tactic to hide assets or become insolvent before the appeal concludes. By offering to provide security, I find that the Applicant has proven to the court her seriousness about the appeal and that she is not merely seeking a stay to delay justice. Indeed, the security offered shifts the risk so that the Applicant maintains the status quo, but in return, she provides the court with an asset that safeguards the Respondent's potential interest.

37. Pursuant to Section 3A of the Civil Procedure Act, I find that since no prejudice would be occasioned to the Respondent if a stay of execution is granted, given that he is in possession of the suit property, I ultimately grant the application dated 5<sup>th</sup> January 2026, allowing a stay of execution of the judgment delivered on 9<sup>th</sup> December 2025, pending the hearing and determination of the Applicant's appeal, subject to the following conditions.

- i. The Applicant shall, within 30 days from the date of this ruling, deposit the original title and a search in court as security for due performance of the decree. In default, the stay shall automatically lapse.
- ii. If the Applicant has not been supplied with the proceedings required to prepare the record of Appeal, her Counsel shall liaise with the Deputy Registrar of this court and ensure that the same are supplied within fifteen (15) days of this order.
- iii. The Applicant shall, within forty-five (45) days from the date of this ruling, compile, file and serve upon the Respondent a complete record of the Appeal.
- iv. In the event of default of any of the aforementioned conditions, the stay hereby granted shall lapse, and the Respondent shall be at liberty to execute without further

reference to the court.

There shall be no Costs.

**Dated and delivered at Naivasha via Teams Microsoft this 9<sup>th</sup> day of April 2026.**



**M.C. OUNDO  
ENVIRONMENT & LAND COURT- JUDGE.**