

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC LAND APPEAL NO. E066 OF 2025

RAEL JEBET TANUI
APPELLANT/APPLICANT

VERSUS

KIMILILI HAULIERS LIMITED.....
RESPONDENT

RULING:

1. The Appellant/Applicant herein filed a Notice of Motion dated 24th November, 2025 against the Respondent seeking the following orders: -
 - i. Spent.
 - ii. Spent.
 - iii. THAT there be stay of the judgment delivered on 24th October, 2025 in ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E219 OF 2023 BETWEEN KIMILILI HAULIERS LIMITED VERSUS RAEJEBET TANUI and all other consequential orders pending the hearing and determination of the main appeal.
 - iv. THAT the honourable court be pleased to grant leave to the firm of M/S EMMANUEL KIPKURUI & COMPANY ADVOCATES to come on record and act for the Appellant/Applicant after judgment.
 - v. Any other relief that the honourable court may deem fit to grant.

- vi. Costs of the appeal.
2. The application is premised on 11 grounds on the face thereof, the applicant's Supporting Affidavit sworn on even date and a Further Affidavit dated 04.02.2026.
 3. The applicant deponed that she is the sole legal administratrix of the estate of the late KAPTINGEI ARAP CHEMWOR, which was confirmed vide the Certificate of Confirmation of Grant dated 02.07.2012.
 4. It was her claim that prior to the death of the late KAPTINGEI ARAP CHEMWOR, he was the sole, legal and exclusive proprietor of the parcels of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/9, 22 and 24.
 5. She went on to state that the respondent sued her in the trial court in the proceedings known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E219 OF 2023 BETWEEN KIMILILI HAULIERS LIMITED VERSUS RAEJEBET TANUI, alleging that she had trespassed onto the above-mentioned parcels of land and sought orders of permanent injunction and damages for trespass.
 6. She deponed that at all material times, she had never applied to have the Certificate of Confirmed Grant dated 02.07.2012 varied and/or rectified to the effect that the same reflects that the respondent was entitled to all that parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 as alleged by the respondent.
 7. The applicant also outlined other factual issues touching on the sale agreement dated 12.04.2012 in respect to the sale

of the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 to one Enock Rotich, the transfer of the said parcel of land and registration thereof, which she maintained was contrary to the provisions of section 45 of the Law of Succession Act.

8. She further deponed that the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/9 forms part of the estate of the late KAPTINGEI ARAP CHEMWOR and is available for distribution among the beneficiaries of the said estate and should not therefore have been included in the suit against her.
9. It was her contention that the trial court erred in her judgment by re-opening and re-writing the sale agreement dated 12.04.2012 between her and one Enock Rotich and further by including an unrelated portion of the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/9, whereas the said parcel forms part of the free property of the late Kapingei Arap Chemwor, yet to be distributed in the succession cause.
10. She thus maintained that unless the prayers sought in the present application are granted, there is a real danger that the respondent will proceed to execute the judgment to her detriment and that of the other beneficiaries of the estate of the late Kapingei Arap Chemwor.
11. It is her claim that the beneficiaries of the estate of the late Kapingei Arap Chemwor, as well as herself, stand to suffer substantial loss that cannot be adequately compensated

monetarily and they might end up being disinherited from the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/9.

12. She deponed that she has an arguable appeal, with high chances of success and which is bound to be rendered nugatory unless the orders sought are granted.
13. The applicant further deponed that she is ready and willing to furnish the court with security for the due performance of the decree at whatever terms as the court may deem fit to grant.
14. In conclusion, the applicant deponed that the application had been filed without delay and urged the court to allow the present application in the interest of justice.
15. The application was opposed. The Respondent filed a Replying Affidavit dated 16.01.2026 sworn by one Francis Osoro Ondera, the manager of the respondent, in response to the averments made in the present application.
16. He dismissed the present application as an abuse of the court process, devoid of merit and being flawed with misinformation and misconstruction of facts and should therefore be dismissed with costs.
17. In response to the averments made in paragraphs 6 and 7 touching on the validity of the confirmed grant, it was his contention that the said averments are unsubstantiated and are not within the jurisdiction of this court but fall within the jurisdiction of the High Court.

18. It was his claim that the applicant has expressly admitted to have sold the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 to Enock Rotich, who admittedly is the agent of the respondent and maintained that the validity of the relationship between the said agent and the respondent, who is the principal, is not an issue in dispute in the present case.
19. He further deponed that the applicant having admitted to have sold the suit land No. 24, her ownership claims over the same parcel are therefore unfounded since the said sale extinguished all her interests and she should not therefore interfere with the actions of the lawful proprietor.
20. In response to the averments by the applicant that the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/9 is unrelated, he maintained that the said averments are misleading.
21. It was his contention that the two parcels of land KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 and 9 were both duly pleaded and evidence tendered thereto and thus both formed the subject properties of the suit.
22. It was his claim that despite the sale agreement denoting the subject property as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24, the actual survey on the ground indicated the physical boundaries cut across into parcel No. 9, and which portion they took possession after being shown by the applicant.

23. That a survey was ordered by the trial court and the County Surveyor upon the survey exercise, duly produced a report dated 04.07.2025 and which confirmed that the suit land covered part of KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 and part of No. 9.
24. He dismissed the claims by the applicant that the beneficiaries of the estate would be disinherited from parcel No. 9 if the judgment is executed, as frivolous and asserted that an estate of a deceased ought to pay up the liabilities outstanding to third parties before the distribution. That the respondent is a lawful creditor of the estate, the suit land having been validly sold by a legitimate administrator.
25. It was his claim that the applicant has no legal or beneficial interest in the suit properties and therefore no substantial loss or irreparable harm can be occasioned to her.
26. Further, he deponed that the applicant is not in occupation and therefore she would not suffer any loss that cannot be compensated by an award of damages.
27. He added that the respondent as the valid owner of the suit land, purchased the property to engage in commercial and productive activities and any stay orders over the usage of the said land would accumulate more inestimable losses and utility that cannot be adequately compensated by damages.
28. In conclusion, it was his claim that the application has been filed after undue and unreasonable delay, noting that the judgment was issued on the 24.10.2024, whereas the

- respondent has made significant plans to develop and use the land.
29. He thus urged the court to dismiss the present application with costs.
 30. The replying affidavit was duly served upon the applicant, who filed a Further Affidavit dated 04.02.2026 in response thereto.
 31. She dismissed the respondent's replying affidavit as being full of distortions, falsehoods, misleading and an abuse of the court process. She therefore denied all the allegations contained therein.
 32. She made reference to the issues touching on the Certificate of Grant dated 02.07.2012 and the allegations of alterations made thereto.
 33. In response to paragraphs 6,7,8 and 11 of the Replying Affidavit, she reiterated that at all material times she has been denying selling the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 to one Enock Rotich but rather that she sold the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/22 which measures 2.71 Acres in her capacity as the administrator of the estate of the late Kaptingei Arap Chemwor.
 34. It was her claim that the respondent failed to establish on a balance of probabilities that the said Enock Rotich was an agent of the respondent.
 35. Consequently, that from the clear, explicit and binding terms of the sale agreement between her and the said Enock

Rotich, the respondent has no legal and/or beneficial interest in the parcels of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 or a portion of the land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/9.

36. In response to the allegations contained in paragraph 9 of the replying affidavit, the Applicant reiterated that she sold the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/22 measuring 2.71 Acres and not parcel No. 24 or 9 and the same is supported by the Sale Agreement.
37. She dismissed the averments contained in the Survey Report dated 04.07.2025 as being fraudulent and devoid of actual facts.
38. In response to the contents of paragraphs 12 and 13 of the replying affidavit, she reiterated that the parcel of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/9 is completely unrelated to the proceedings before the trial court and further the respondent failed to sufficiently demonstrate any legal and beneficial interest thereto.
39. She reiterated that the beneficiaries of the estate of the late Kaptingei Arap Chemwor, including herself, stand to suffer irreparable loss and damage as they risk being disinherited on account of the respondent's fraudulent actions.
40. She deponed that she is in complete, exclusive, sole, uninterrupted and peaceful possession and occupation of the parcels of land known as KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24 and a portion of parcel No. 9.

41. On the contrary, it is her claim that possession being a question of fact, the respondent has failed to demonstrate that it is in possession of the said parcels of land No. 24 and 9.
42. She restated that she is ready and willing to furnish whatever security for the due performance of the decree at whatever terms and maintained that the application was filed in good time.
43. In conclusion, she urged the court to allow the application and to grant the orders sought in the interest of justice.
44. This court issued directions on the 19.01.2026 that the present application be canvassed by way of written submissions. The appellant/applicant filed her submissions dated 05.02.2026 while the respondent filed its submissions dated 18.02.2026 together with authorities, which I have read and considered.

Analysis and Determination:

45. Having carefully considered the Application and the grounds therein, the Supporting Affidavit, Further Affidavit and the annexures thereto, the replying affidavit in response to the application as well as the rival submissions in totality, it is my considered view that the issues arising for determination are as follows: -
 - i. *Whether an Order for Stay of Execution can issue against the judgment and decree of the trial court issued on 24.10.2025.*

- ii. *Whether the present application is merited.*
- iii. *Who shall bear the costs of the present Application.*

46. Having identified the following issues for determination, I will now proceed to discuss the same as hereunder.

Whether an Order for Stay of Execution can issue against the judgment and decree of the trial court issued on 24.10.2025;

47. It is now well settled that no appeal shall operate as an automatic stay of execution. Order 42 Rule 6 of the Civil Procedure Rules provides as follows: -

6. (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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 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.

(emphasis mine)

48. Guided by the above statutory provision, the three elements that must be proved to warrant the grant of an order for stay of execution are as follows:-

- i. The Court is satisfied that substantial loss may result to the applicant unless an order for stay of execution is ordered;
- ii. The application is brought without undue delay and
- iii. Security for costs as the court orders for the due performance of such decree or order is provided.

49. I will now proceed to determine each of the above requirements as hereunder.

Substantial Loss:

50. Substantial loss has been held to mean any loss, great or small, that is of real worth or value and not mere nominal

loss. In the case of Silverstein -vs- Chesoni [2002]1 KLR 867 the Court held that: -

“The issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such a loss would render the appeal nugatory.”

51. An applicant is therefore under a duty to demonstrate the substantial loss he is likely to suffer unless the order for stay of execution sought is granted. It has been held that it is not sufficient to merely state that substantial loss may be occasioned without demonstrating the same. (See **New Stanley Hotel Ltd -vs- Arcade Tobacconist (1980) KLR 757**).
52. It is the applicant's claim that should the respondent proceed with execution of the judgment and the resultant decree, then suit parcel No. 24 and 9, which forms the free property of the deceased Kaptingei Arap Chemwor, may not be available for distribution and she together with the other beneficiaries of the said estate, stand to suffer substantial loss as they may end up being disinherited from the suit land.
53. The applicant also deponed that she is in complete, exclusive, sole, uninterrupted and peaceful possession and occupation of parcel No. 24 and a portion of parcel No. 9 and therefore risk being evicted from the said parcel of land.

54. In addition, it is the applicant's contention that the respondent has no legal or beneficial interest in the parcels Nos. 24 or a portion of No. 9 and averred that she only sold parcel No. 22 measuring 2.71 Acres and not No. 24 or 9 as alleged and awarded in the judgment of the trial court.
55. The respondent on the other hand maintained that the applicant having admitted to have sold parcel No. 24, in her capacity as the legal administrator of the estate of the deceased, her ownership rights and claims over the said parcels were extinguished as a result of the said sale.
56. It is their claim that the respondent is the lawful proprietor of the said parcels of land. It is further their contention that despite the sale agreement showing No. 24, the actual survey on the ground indicates that the physical boundary cuts across No. 9. They relied on the findings of the Survey Report dated 04.07.2025, which they deponed confirmed that the suit land covered part of parcel No. 24 and part of parcel No. 9.
57. In addition, it is their claim that the respondent is a lawful creditor of the estate, the suit land having been validly sold by a legitimate administrator, and neither the applicant nor the beneficiaries of the estate of the late Kaptingei Arap Chemwor, have any beneficial interests and therefore substantial loss cannot occasion to them.
58. The respondents further contend that they took possession of the suit land pursuant to the sale and maintained that the applicant is not in possession.

59. That should the orders for stay of execution sought be granted, then they stand to suffer inestimable losses and utility that cannot be adequately compensated by an award of damages since the suit land was purchased for commercial purposes and utility.
60. I have taken the rival arguments into consideration as well as the effect of the judgment of trial court issued on 24.10.2025. From the facts pleaded by both parties, there appears to be 3 parcels of land involved in the dispute; parcel No. KAPSARET/SIMAT BLOCK 5 (LEMOOK)/24, 9 and 22.
61. It is not in dispute that the three parcels of land all belong and forms part of the free property of the estate of the late Kaptingei Arap Chemwor. It is also not in dispute that one of the said parcels of land was duly sold by the applicant herein in her capacity as the legal administrator of the said estate of the deceased.
62. Although this court is careful not to delve into the merits of the judgment of the trial court at this stage, particularly with regards to which parcel of land was actually sold, the acreage of the same on the ground and on the map as well as the legality of the sale agreement, I must state that from a look at the judgment of the trial court, the court issued an order of permanent injunction as well as the amendment of the RIM in accordance with title No. 24.
63. Both parties herein contend that they are in actual possession and occupation of the suit land. However, none of

the parties have provided conclusive evidence in support of the said averments of occupation. Be that as it may, this court takes note of the effect of the judgment and the resultant decree of the trial court if executed.

64. In **James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR** the Court expressed itself as hereunder:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the Civil Procedure Rules. This is so because execution is a lawful process. The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

65. Guided by the above, it is the finding of this court that the applicant has sufficiently demonstrated the substantial loss that she is likely to suffer if the orders of stay of execution sought are not granted, to the required standard.

Filing of the Application;

66. The next ground to be established is whether the present application was filed timeously and without unreasonable or undue delay.

67. The present application was filed on the 24.11.2025 whereas the trial court judgment was issued/pronounced on the 24.10.2025.

68. The present application has therefore been filed within a period of 30 days, which period is reasonable and without undue delay.

69. I however wish to point out that the respondent at paragraph 20 of the replying affidavit stated that the present application was filed after undue and unreasonable delay, the trial court judgment having been issued on 24.10.2024.

70. Despite the said averments by the respondent, I do note that from the annexure thereto marked F001, the judgment annexed thereto is dated 24.10.2025. The said assertions are therefore in my opinion meant to mislead this court and the same are hereby disregarded.

Security for Costs;

71. The final element is on the security of costs for the due performance of the decree as the court may direct.
72. The applicant has shown her readiness and willingness to abide by any terms on the security of costs for the due performance of the decree as the court may order.
73. It is the finding of this court that this element has also been satisfactorily proved to the required standard.

Whether the present application is merited.

74. In view of the findings in issue No. (i) above, this court finds that the present application is merited. The applicant has sufficiently demonstrated all the necessary conditions for the grant of an order of stay of execution.
75. Consequently, this court finds that the applicant is entitled to the orders sought in the application.

Who shall bear the costs of the present Application

76. The general rule is that costs shall follow the event in accordance with the proviso to section 27 of the Civil Procedure Act, unless the court is satisfied otherwise.
77. In the present case, having held that the applicant has satisfactorily proved her claim to the required standard, I find that she is entitled to costs of the application.

CONCLUSION:

78. The upshot of the above is that the present application vide the Notice of Motion dated 24th November, 2025 is merited and is hereby allowed on the following terms: -
 - i. The present Application be and is hereby allowed.

- ii. Leave be and is hereby granted to the firm of M/S EMMANUEL KIPKURUI & COMPANY ADVOCATES to come on record and act for the Appellant/Applicant after judgment.
 - iii. An order for stay of execution be and is hereby issued against the judgment delivered on 24th October, 2025 in ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E219 OF 2023 BETWEEN KIMILILI HAULIERS LIMITED VERSUS RAEL JEBET TANUI and all other consequential orders pending the hearing and determination of the main appeal.
 - iv. The applicant be and is hereby ordered to deposit Kshs. 100,000/= as security for costs in court, within a period of 30 days from the date hereof.
 - v. Failure to comply with order (iv) above, Order (iii) hereinabove automatically lapses.
 - vi. Costs of the present application to be in the cause.
79. It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 16th day of APRIL, 2026.

**HON. C. K. YANO
JUDGE**

Ruling delivered in the presence of: -

Mr. Kipkurui for the Appellant.

Kimurgor for the Respondent.

Court Assistant - Laban