

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCLA NO. E065 OF 2025

MOHAMED HASHI AHMED
APPELLANT

VERSUS

CHARITY DAMA MWAMBIRE **1ST**
RESPONDENT

EMMANUEL KADENGE **2ND**
RESPONDENT

And

RAMADHAN SHOMBO **1ST INTERESTED**
PARTY

JOAB KATANA **2ND INTERESTED**
PARTY

MEJA KITI KALU **3RD INTERESTED**
PARTY

RULING

1. The Notice of Motion dated 7th November 2025 is seeking stay of execution of the subordinate court’s judgment delivered on 5th November 2025 in **Malindi Land Case Number E0062 Of 2023**. The application is supported by the sworn affidavit of the applicant, also dated 7th November 2025.
2. The applicant states that judgment was delivered in favour of the defendants and the interested parties in that case; that the subject matter in the suit was encroachment, alienation and/or trespass into the plaintiff’s land Parcel Number **Kilifi/Jimba/1141**. However, his defense in the matter had been that he purchased the suit land in **2009** while there was a permanent dwelling house thereon, and that he proceeded to erect other permanent houses, and has been in occupation of the suit property without any interruption. He avers that the respondents and the interested parties do not live on the suit property and do not hold any title to the land, and that they began encroaching of the suit property in the year **2023**, prompting him to file the case in the subordinate court seeking injunctive orders against them. The respondents and the interested parties

made a counterclaim in their defence, seeking cancellation of the applicant's title, and the trial court ordered for cancellation of the applicant's title. The applicant states that if the judgment is not stayed, then the respondents may apply for cancellation of the applicant title and may proceed to demolish the applicant's residential house which is the only family dwelling house; that it is in the interests of justice that the execution of the judgment be stayed.

3. The 1st respondent opposed the application through her replying affidavit dated 12th January 2026, wondering why it is only at the present juncture that the applicant sees the need to introduce a purchase agreement which was never part of the lower court proceedings and which action she terms irregular; that her claim to the land is genuine and that she has a permanent structure surrounded by a brick wall on the suit property.
4. The application was disposed of by way of written submissions. Both the appellant and the respondent filed submissions dated 28/1/2026 and 3/2/2026 respectively, which the court has considered in the preparation of this ruling.
5. I have considered that today record of appearance already been filed in this matter and the appeal is awaiting directions as to hearing.
6. In the circumstances I find that it will be better for the sake of valuable judicial time at this juncture and in the stated circumstances that an order be issued that the suit property be preserved in its present state pending the hearing and disposal of the appeal and I dispose of the application dated 7th November 2025 by issuing the following orders:
 - a. *The motion dated 7th November 2025 is allowed in terms of **prayer number (c)** thereof;*
 - b. *The costs of the application shall be costs in the appeal;*

c. The Deputy Registrar of this court shall available the lower Court file record and the appeal shall be mentioned for issuance of directions as to hearing on 21st May 2026.

Dated, signed and delivered at Malindi on this 14th Day of April, 2026.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**