

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT SIAYA

ELCLA/E046/2025

BRIDGE INTERNATIONAL ACADEMIES LIMITED.....
APPELLANT

VERSUS

PETER OTIENO OGUTU (Appointed Legal Representative to the
Estate of the late Lucas Wayodi Ogutu (deceased)
.....1ST RESPONDENT

DISTRICT LAND REGISTRAR SIAYA.....2ND
RESPONDENT

RULING

- 1 The firm of Wilbur Antony & Company Advocates filed the Notice of Motion Application dated 15/10/2025 the subject of this ruling on behalf of the Appellant seeking for the following orders; -
 1. An order that this Application is certified urgent and heard ex parte in the first instance.
 2. An order for stay of execution of the Decree of the Siaya Chief Magistrate's Court in Siaya MCELC/E016/2024 dated August 6, 2025, pending the hearing and determination of this Application inter partes.
 3. An order for stay of execution of the Decree of the Siaya Chief Magistrate's Court in Siaya

MCELC/E016/2024 dated August 6, 2025, pending the hearing and determination of this Appeal.

4. An order of injunction against the 1st and 2nd Respondent from alienating /or transferring ownership of Land Title Number SIAYA/KARAPUL RAMBA/ 3539 to any third party pending the hearing and determination of this Application inter partes.
5. An order of injunction against the 1st and 2nd Respondent from alienating /or transferring ownership of Land Title Number SIAYA/KARAPUL RAMBA/ 3539 to any third party pending the hearing and determination of this Appeal.
6. A declaration that the 1st and 2nd Respondents' registration of the 1st Respondent as proprietor of Land Title Number SIAYA/KARAPUL RAMBA/3539 is in breach of the decree and judgment of the Siaya Chief Magistrate's Court in Siaya MCELC/E016/2024 delivered on August 6, 2025.
7. An order directing the 2nd Respondent to rectify the register for Land Title Number SIAYA/KARAPUL RAMBA/3539, by cancellation of the registration of the 1st Respondent as legal proprietor and restoring legal proprietorship of land Title Number SIAYA/KARAPUL RAMBA/3539 to the proprietorship status that obtained before the judgment and decree of the Siaya Chief Magistrate's Court dated August 6, 2025, pending the hearing and determination of this Appeal.

8. An order that costs of this Application be costs in the case.
- 2 The application was premised upon grounds on its face and the supporting affidavit of Griffin Chesi Asigo the Managing Director of the Appellant Organization who averred that on August 6, 2025, the Trial Court delivered judgment in favour of the 1st Respondent in Siaya MCEL2C/E016/2024.
- 3 That the Appellant, being aggrieved by the Judgment of the Trial Court preferred the present Appeal in this Honourable Court raising grounds in the Appeal that the Trial Court erred in law and in fact by: -
- a. Failing to apply the limitation periods imposed under Section 4(2) and 20(2) of the Limitations of Actions Act Chapter 22 laws of Kenya thereby permitting a claim that was statute barred to proceed to judgment.
 - b. Exercising jurisdiction in the matter despite the claim being statute barred thereby acting beyond its constitutional and statutory powers and in disregard of settled law thereby arriving at a voidable judgment.
 - c. Failing to consider the Appellant's submissions regarding limitation and non-joinder of necessary parties which were central issues in the Appellant's defence before the Trial Court resulting in a fundamental flaw in the Court's reasoning, and prejudice to the 1st Defendant leading to misdirection and an unjust conclusion.

- d. Overlooking principles of fairness and equity by disregarding the evidence that the principal heir to the deceased's estate benefited from the proceeds of sale of the Suit Property thereby contravening settled common law equitable principles against unjust enrichment.
- e. Failing to give any weight to the evidence that the 1st Respondent participated in the sale deliberations in assessing the Plaintiff's witness credibility thereby leading to a material misdirection of fact and incorrect determination.
- f. Failing to adhere to the legal principle of stare decisis related to statute barred claims and want of jurisdiction leading to an incorrect finding.
- g. In assessing the credibility of the 1st Respondent's testimony leading to a material misdirection of fact, and incorrect determination of the claim, by failing to give any weight to the First Respondent's testimony to the effect that the deceased Lucas Wayodi Ogutu no longer had a share in Land Title Number SIAYA/KARAPUL RAMBA/3539 (hereafter, the "Suit Property") leading to misdirection and unjust determination that the Suit Property reverts back to the estate of the late Lucas Wayodi Ogutu(deceased).
- h. Ignoring the substantive factual contentions of the Parties to the Suit in their pleadings, and the evidence before the Trial Court, leading to an incorrect determination, and in particular, a finding that the 1st Respondent should have peaceful occupation and possession of the Suit Property which finding is not supported in law given the First

Respondent's standing in the Suit, and the evidence, resulting in a misappreciation of the evidence and a fundamental error of law.

- i. Ignoring the 1st Respondent's testimony asserting an exclusive claim to the Suit Property mutually incompatible to that of the deceased's estate, thereby failing to find that the legal representative's claim in direct contravention of his fiduciary duty to the estate of the deceased, and its beneficiaries constitutes a fundamental conflict of interest that rendered the entire Suit an abuse of the Court Process.

5 It was averred that the Appellant has an arguable Appeal anchored on firm legal and equitable foundations and that the Judgment of the Trial Court is voidable and demonstrably ought to be set aside /or varied and substituted with the Judgment of this Honourable Court on Appeal.

6 The deponent stated that in the impugned Decree of the Trial Court, the Trial Court directed the 2nd Respondent to revert land parcel SIAYA/KARAPUL RAMBA/3539 to the estate of Lucas Wayodi Ogutu (deceased). That however in breach of the Decree of the Trial Court, the 1st Respondent procured the 2nd Respondent to register the Suit Property: SIAYA/KARAPUL RAMBA/3539 in the name of the 1st Respondent.

7 It was averred that the registration of the 1st Respondent as proprietor of the Suit Property is not only in breach of

the Decree of the Trial Court but is also illegal under Section 45 of the Law of Succession Act and therefore, an order of register rectification and cancellation of certificate of title should issue mandating the Second Respondent to cancel the certificate of title for the Suit Property issued to the 1st Respondent.

- 8 The Appellant is apprehensive that the illegal registration of the 1st Respondent as proprietor of the Suit Property may serve to give the 1st Respondent impetus to sell, dispose or alienate the Suit Property thus rendering the Appellant's Appeal nugatory.
- 9 The Appellant is apprehensive that if the 1st Respondent were to execute the impugned Decree of the Trial Court and evict the Appellant from the Suit Property pursuant to the third Order of the Trial Court as contained in its Decree, the Appellant would suffer substantial loss and inconvenience hence the application herein. The Appellant contends that it is in the interest of justice and fairness that its application is heard and determined urgently, and the orders sought granted.

RESPONSE

- 10 In opposing the application, the 1st Respondent filed a replying affidavit sworn on 25th October 2025. It was averred that an application similar to what is before this court was made before the trial court on 27th August 2025.

- 11 That the application was however denied after the court established that the 2nd Respondent had complied with the decree of the trial court. That the suit property had been reverted to the deceased and the 1st Respondent had proceeded to take out letters of administration over the estate of the deceased in Siaya Succession Cause No E336 of 2024 and that vide transmission the suit property had already been registered in the names of the 1st Respondent.
- 12 The deponent stated that the instant application has failed to meet the threshold for grant of the orders sought for reasons that, the Appellant has failed to demonstrate substantial loss, No security has been furnished for due performance of the decree in the event that the appeal does not succeed and the decision that is being appealed has been overtaken by events
- 13 It was stated that it is the 1st Respondent that is bound to suffer substantial loss in the event that the orders sought are granted as the suit property has already been transferred as had been ordered by the trial court. The court was urged to dismiss the application.

SUBMISSIONS

- 14 The court issued directions for the application to be dispensed by way of written submissions. The Appellant's submissions are dated 15th November 2025 and the 1st Respondents submissions are dated 4th November 2025.

The court has considered both sets of submissions on record.

ANALYSIS AND DETERMINATION

- 15 The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under **Order 42 rule 6(2)** of the **Civil Procedure Rules** which provides:

“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.

- 16 The court, in **RWW v EKW [2019] eKLR**, considered the purpose of a stay of execution order pending appeal, in the following words:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the

fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

9. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

- 17 The first ground to be established is whether substantial loss may result to the Applicant unless stay of execution is granted. What amounts to substantial loss was expressed by the Court of Appeal in the case of **Mukuma vs Abuoga (1988) KLR 645** where their Lordships stated that;

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

- 18 From the judgement itself, it is clear that the contest was on the ownership of the suit property SIAYA/KARAPUL RAMBA/3539. I have taken time to peruse the judgement of the trial court and the genesis of the matter in order to put into context the rationale behind the final orders issued by the trial court. The plaintiff in the lower court and who is the 1st Respondent in the instant appeal sought for orders of permanent injunction, reversion of the suit property back to the estate of the deceased Lucas Wayodi Ogutu and orders of eviction against the appellant herein.

- 19 From the facts of the case, it was established that the suit property had been transferred to the appellant herein

without a proper succession process hence intermeddling with the estate of the deceased. The court established this fact after review of the green card on record which was dated 14/5/1987 its actual date of opening which showed that the property had been registered to the deceased on 9/9/1993. The deceased had passed on in the year 2007 and the suit property had been transferred to the Appellant without any succession. The court in its final orders made the finding that the title in the name of the appellant had been obtained illegally through a corrupt scheme and allowed the prayers sought in the plaint.

20 The Appellant dissatisfied with the above orders has now approached the court for stay of execution pending appeal as they are apprehensive of being evicted from the property. Having keenly gone through the application on record and other pleadings it is clear that the trial court orders have already been implemented, the suit property was reverted to the deceased, thereafter the 1st respondent filed a succession cause at the court and the property was then registered in his names by way of transmission.

21 But I think for me the main issue for the court to interrogate is if substantial loss will ensue should the orders sought not issue and also to avoid the appeal from being rendered nugatory. In the case of **Kenya Shell Limited -vs- Benjamin Karuga Kigibu & Ruth Wairimu**

Karuga (1982-1988) KAR 1018 the Court of Appeal pronounced itself to the effect that:

“It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”

- 22 The decree holder currently holds the title following transmission and contends that the application has been overtaken by events since the orders of the court have already been implemented. In my view he is still a party to this appeal and therefore the argument that the application has been overtaken by events cannot hold. The property is still within reach of the appellate court at this point by dint of the appeal that has been filed.
- 23 The orders of the trial court also entail eviction of the appellant from the suit property. The trial court indeed granted the defendant appellant 45 days for removal of any structures erected on the suit property. I will not belabour on the findings in the judgement, this is because the same is the subject of the present appeal and the court will have time to go through the same at the appeal stage. There is also the apprehension that the Respondent being the registered owner may dispose of the property.

24 The question that the court must ask is what will be the effect of such alienation to the execution of the decree of this appellate court should the court overturn the trial courts findings, this will effectively remove the suit property from the control of this appellate court and execution of its decree. Further the same will cause great hardship to the appellant since they may have to first file suit against the new owner in the event it is alienated or even charged since they are not parties to this appeal. Moreover, in the event that eviction ensues then the Appellant will suffer great loss as well rendering the appeal nugatory.

25 I have already noted that the decree holder holds the title by transmission pursuant to the judgement of the court which is under appeal. I think it would be unnecessary to cancel the title and revert to the proprietorship status that obtained before the judgment and decree of the Siaya Chief Magistrate's Court dated 6th August 2025. This can await the outcome of the appeal. What the court must do is to balance the rights of both parties.

26 In the case of **African Safari Club Limited vs Safe Rentals Limited, Nai. Civ. App. 53 of 2010 (ur)** this Court held:

“...with the above scenario of almost equal hardship by the parties, it is incumbent upon the court to pursue the overriding objective to act fairly and justly...to put the hardships of both parties on

scale... we think that the balancing act is in keeping with one of the principles aims of the oxygen principle of treating both parties with equality or placing them on equal footing in so far as is practicable.”

27 Furthermore the overriding objective of the court is to ensure justice is met through equal protection of rights of the parties before it. Having noted the foregoing then it would be prudent to let things as they are on the ground as well as the register. For purposes of the register the title should be deposited with court. This balances the interests of the parties and I do not see any prejudice to be occasioned to the decree holder pending the appeal. Should the appeal succeed then the register will be sustained. At the same time the appellant is assured for now there shall be no eviction and alienation of the suit property.

28 The instant application was filed on 15th October 2015 which was 2 months after the judgement of the trial court. I would not term this delay inordinate.

29 On security the court will set the terms.

30 The following orders therefore issue to dispose of the application dated 15th October 2025.

1. An order for stay of execution of the Decree of the Siaya Chief Magistrate’s Court in Siaya MCELC/E016/2024 dated August 6, 2025, to the extent

that there shall be no eviction of the Appellant from the suit property SIAYA/KARAPUL RAMBA/3539 pending the hearing and determination of this Appeal.

2. An order hereby issues restraining the 1st Respondent from alienating /or transferring ownership of Land Title Number SIAYA/KARAPUL RAMBA/ 3539 to any third party pending the hearing and determination of this Appeal.
3. The 1st Respondent shall deposit the Certificate of title SIAYA/KARAPUL RAMBA/ 3539 issued on 1/9/2025 with the Court Administrator Siaya Law Courts through the Deputy Registrar ELC within 14 days of this ruling.
4. The appellant shall deposit with the court a sum of Kshs. 150,000/- Security for Costs for the due performance of the decree within 30 days from the date of this Ruling.
5. The costs of the application shall abide the outcome of the appeal.

Orders accordingly.

Ruling dated signed and delivered this 22nd day of April 2026

HON. JUSTICE A. E. DENA

JUDGE

22/04/2026

**Ruling delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Mr. Omondi Holding Brief for Mr. Mugodo for the Appellant

Mr. Oduol for Respondent

Court assistant: Dorothy Awour

ORIGINAL