

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC APPEAL NO. E054 OF 2025

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|----------------------------|------------------|------------------|-----------------------------|
| FRANCIS | CHANGWONY | CHEPKURUI | |
| APPELLANT/APPLICANT | | | |
| VERSUS | | | |
| AMOS | CHEPKURUI | | 1ST |
| RESPONDENT | | | |
| KEVIN | KIPRUTO | KIBET | 2ND |
| RESPONDENT | | | |

RULING:

1. The Application coming for consideration in this ruling is the Appellant/Applicant's Notice of Motion dated 29th October, 2025 seeking the following orders:-
 - (a) Spent
 - (b) Spent
 - (c) THAT there be a stay of execution of the judgment of the Eldoret Magistrate's Court Land Case No. E079 of 2023 delivered on 23/9/2025 pending hearing and determination of this appeal.
 - (d) THAT necessary directions be given.

2. The Application is supported by the Appellant's Affidavit of even date. The Appellant deponed that the Chief Magistrate's Court dismissed his suit in Eldoret CM Land Case No. E079 of 2023, and allowed the Respondents' Counterclaim. That being aggrieved by the judgment, he has lodged the present Appeal, which he claims has high chances of success. He deponed that

there is a real likelihood that the Respondents will proceed to execute the judgment and have his title cancelled, rendering the Appeal nugatory.

3. The Appellant prayed that the present application be allowed in the interest of justice so as to preserve the state and registration of the land and to allow the appeal be heard on merit. He deponed that the application was made without undue delay. He explained that the subject of the Appeal is real property, and is sufficient security for the Appeal, thus the Respondents will not be prejudiced if the application is allowed.
4. The Respondents opposed the Application through a Replying Affidavit sworn by the 1st Respondent on 19th November, 2025. The Respondents claim that the Appellant has not satisfied the mandatory requirements for stay under Order 42 Rule 6(2) of the Civil Procedure Rules. The Respondents aver that the trial court found that the Appellant fraudulently acquired land parcel no. Sergoit/Koiwoptaoi Block 12 (Katalel)32, the suit property herein, and allowed their counterclaim.
5. The Respondents termed the Appellant's claim that his title is at risk of cancellation misleading, and stated that cancellation is part of lawful execution of a judgment founded on fraud, and not an arbitrary act. He averred that the Appellant had not shown how execution of a lawful judgment constitutes substantial loss, but merely fears losing property he never lawfully owned. The Respondents urged that substantial loss must be real and demonstrative, not speculative or self-created,

and claimed the Appellant had not produced evidence of such loss.

6. The Respondents further averred that the judgment concerns ownership of immovable property, which is reversible should the appeal succeed. They asserted that the land is intact and as the owners, they are capable of restoring possession if required, thus there is no risk of the appeal being rendered nugatory. They claimed that a party found to have acquired land illegally cannot seek equitable reliefs such as stay. Further, that the Appellant could not rely on a tainted title to justify stay.
7. The Respondents further averred that the Appellant had not offered any form of security for the due performance of the decree. That the Plaintiff was found to have acquired the suit land unlawfully, thus it was incorrect to claim it was sufficient security. They claimed that justice demands that they be allowed to enjoy the fruits of their judgment, but the present application is meant to delay them from enjoying the said judgment. They urged that the Memorandum of Appeal discloses no arguable grounds capable of overturning the judgment of the trial court. They deponed that the application is fatally defective and ought to be dismissed.

Submissions:

8. The court directed that the application would be canvassed by way of written submissions. The parties complied, with the Appellant filing submissions dated 17th February, 2026 while the Respondents' submissions are dated 23rd February, 2026.

Appellant's Submissions;

9. In the Appellant's Submissions, it was submitted that the law on stay of execution pending appeal is Order 42 Rule 6. Counsel submitted that the threshold for grant of an order of stay was set out in the case of **Butt vs rent Restriction Tribunal (1979) KLR**. Counsel for the Appellant submitted that the power to grant stay of execution is discretionary and is exercised to preserve the subject matter. Counsel argued that the 1st Respondent is in occupation of the suit land registered in the name of the Appellant. Counsel explained that the trial court ordered cancellation of the Appellant's title deed and ordered the land registry to issue the 1st Respondent title for the land.
10. Counsel submitted that the Appellant will suffer irreparably if the title is cancelled before the Appeal is heard and determined on merit. Counsel asserted that the land in itself is sufficient security for the matter pending appeal. Counsel added that there is need to preserve the proprietorship of the Applicant pending the hearing and determination of the appeal. Counsel urged that the Respondents will not be prejudiced if the application is allowed as prayed. Counsel relied on **Kedoki & Another vs Nicole (Environment and Land Appeal E004 of 2025)(2025) KEELC 5012 (KLR)** and **Century oil Trading Company Ltd vs Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007 KLR**.

Respondents' Submissions;

11. On the part of the Respondent, Counsel submitted that the cornerstone of granting stay is proof of substantial loss. Counsel submitted that the subject matter is land occupied by the 1st Respondent. Counsel submitted that there is no evidence of impending eviction, demolition or alienation. Counsel further submitted that rectification of the register is legally reversible should the Appeal succeed. Counsel cited **Kenya Shell Ltd vs Benjamin Karuga Kibiru (1986) KLR 410** and **James Wangalwa & Another vs Agnes Naliaka Cheseto (2012) eKLR**.
12. With regard to security, Counsel submitted that the Applicant has not offered any security whatsoever. Counsel reiterated that the suit land is the subject of the decree and was found to have been fraudulently registered in his name. Counsel argued that disputed property cannot constitute security within the meaning of Order 42 Rule 6(2)(b), and added that the omission to provide security alone renders the application defective. Counsel cited **Halai & Another vs Thornton & Turpin (1963) Ltd (1990) KLR 365**.
13. Counsel further submitted that the Appellant had not demonstrated sufficient grounds to justify suspension of the decree. Counsel contended that the Applicant's right of appeal is preserved whether or not stay is granted, but the Respondents' right to enjoy the fruits of their judgment should not be unjustly delayed. Counsel argued that the Appellant had neither met the mandatory statutory threshold under Order 42 Rule, nor justified the exercise of this Court's discretion in his

favour. Counsel asked that the present application ought to be dismissed with costs, and relied on **RWW v EKW (2019) eKLR**.

Analysis and Determination:

14. I have considered the present application and the response thereto alongside the parties submissions filed herein. I find that the only issue for determination is whether the Applicant has met the threshold for grant of stay of execution pending Appeal.
15. It is trite that the filing of an appeal does not automatically qualify the Appellant to a grant of orders stay of execution. For a court to grant an order of stay of execution, it must be satisfied that the Applicant has met the legal requirements for grant of such relief. The law governing the grant of orders for a stay of execution pending appeal is codified under Order 42 Rule 6 of the Civil Procedure Rules. Order 42 Rule 6(1) & (2) stipulates as follows:-

6. Stay in case of appeal [Order 42, rule 6]

(1) 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.

16. In summary, for the Court to grant the Orders sought in the present Motion, the Appellant herein must meet the following conditions: -

(i) That he will suffer substantial loss if the stay is not granted.

(ii) The Application has been made undue delay.

(iii) The Applicant is able to provide such security for the due performance of such degree or order as the Court may direct.

17. The first condition is that the Applicant must demonstrate that he will suffer substantial loss if the stay orders are not granted. In the case of ***Kenya Shell Limited vs Kibiru & Another (1986) eKLR***, the Court observed as follows with regards to substantial loss:-

“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 a rare case when appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the Respondents should be kept out of their money.”

18. Similarly, in the case of ***James Wangalwa & Another vs Agnes Naliaka Cheseto (2012) eKLR***, the Court held as follows:-

“... 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 CPR. 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.”

19. As regards the issue of substantial loss, the Appellant claims that there is a risk that the Respondents will execute the judgment delivered by the trial court on 23rd September, 2025. He has explained that the Respondents may move to have his title cancelled before the appeal herein is heard and determined, rendering this appeal nugatory and causing him to suffer substantial loss. The Respondents however argue that the Appellant has not adduced evidence to show that he does indeed stand to suffer substantial loss.
20. I have looked at the impugned judgement, and note that indeed the trial court declared the 1st Respondent the lawful owner of the suit property. The court further declared that the Appellant had acquired registration over the suit property fraudulently, and that it was void. The court directed the Land Registrar to cancel the Appellant's title and the entries made thereunder, and to issue a new title to the 1st Respondent.
21. Both the Appellant and the Respondents have admitted that the suit property, though registered in the name of the Appellant, is currently in the possession by the 1st Respondent. If the Respondents move to execute the judgment, and the Appellant's title will indeed be cancelled, and since he is not in possession, he will lose his only tangible claim on the suit land which is the registration as owner of the land. If the 1st Respondent is indeed issued with a title and he is the one in possession, there will be nothing to preserve the Appellant's interest over the suit property.
22. The Respondents have claimed that there is no threat of eviction, if they execute the judgment and acquire the title as well as retain possession. However, there is nothing to

guarantee that the Respondents will indeed keep their word. There is no doubt that if the Respondents proceed with execution, they will not only have possession, but also title to the land. There would be nothing to stop them from disposing off the suit property, in which event, the Appellant will be exposed to substantial loss, and if the intended Appeal were to succeed, it would indeed be rendered nugatory.

23. And even if the land is not sold or transferred to another party, it must be noted that if the Appellant's title is cancelled and a new one issued to the 1st Respondent, reversing such registration will not come without some financial cost to the Appellant. It is more in the interest of justice and cost effective to retain the status of registration pending the appeal, and parties will be at liberty to proceed as per the outcome of this court.
24. The second condition is that the Application for stay must be made undue delay. In the case of **Jaber Mohsen Ali & Another vs Priscillah Boit & Another (2012) eKLR**, the Court explained the concept of undue delay as follows:-

“11. ... The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”

25. The impugned judgment herein was delivered on 23rd September, 2025, while the Appellant filed the present

application on 29th October, 2025 thirty six days later. In the circumstances, this court finds that the present application has been made without undue delay.

26. The last consideration is the provision of security for the due performance of the decree. In **Arun C. Sharma vs Ashana Raikundalia T/A Rairundalia & Co. Advocates** Justice Gikonyo explained the purpose of security as follows:-

“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.”

27. As to what constitutes sufficient security, in **Focin Motorcycle Co. Limited vs Ann Wambu Wangui & Another (2018) eKLR**, the court stated that:-

“Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to

provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.”

28. In this present application, the Appellant has averred that the suit property, being real property, is sufficient security for the due performance of the decree. The Respondents however contested this, as they claimed that this is the same property that is subject of the instant appeal, and the trial court found that the Appellant had acquired it fraudulently.

29. However, it is trite that a court has discretion to accept any property offered as security, including the property that is in dispute. This discretion is confirmed in ***RWN vs EKW (2019) eKLR***, where the court held that:-

“13. The other condition for granting stay orders is on the security to be offered. The law is that a party seeking stay must offer such security for the due performance of the orders as may ultimately be binding on the appellant. I am however of the considered view that in the circumstances of this cause and it being a matrimonial cause, the court can grant stay of execution of its orders without demanding that the Applicant furnish the Court with security for the due performance of the orders. As to whether the application was made without, unreasonable delay, I find in the affirmative.”

30. As already stated, the title is currently in the name of the Appellant. Even though the Appellant’s ownership was

impeached in the lower court, the Appellant is here to challenge the decision of the lower court. Therefore, until this appeal is determined, the issue of ownership remains in limbo. Consequently, this Court will accept the suit property as sufficient security for the due performance of the decree.

31. This court is however alive to the fact that in granting an order of stay of execution, it is expected to balance out the interests of both the successful litigant to enjoy the fruits of the judgment, and the Applicant's right to pursue their appeal. In staying the execution of the judgment, the title remains in the name of the Appellant. In view of the finding of fraud by the lower court, there is equally nothing to stop him from transferring the land to third parties to defeat the judgment.
32. Bearing in mind that the Appellant himself asked the court to issue any necessary directions in the matter, this court will go further and issue an order of status quo with respect to the state of registration of the suit land. The effect of this order is that it will restrain the Appellant from transferring the suit property to any third party, or in any other manner disposing of the suit property pending a determination of the Appeal. This order will serve to secure the suit property and protect the Respondents' interests over the land.
33. As the Appeal is yet to be heard, the costs of this application shall be costs in the Appeal.

Orders:

34. Consequently, the application dated 29th October, 2025 succeeds and is determined as follows:-

- (a) That there shall be a stay of execution of the judgment of the Eldoret Magistrate's Court Land Case No. E079 of 2023 delivered on 23/9/2025 pending hearing and determination of this appeal.
- (b) That the stay of execution shall be on condition that the Appellant is hereby restrained from transferring the parcel of land known as Sergoit/Koiwoptaoi Block 12 (Katalel)32 to any third party or in any other way disposing of the suit property pending the hearing and determination of this Appeal.
- (c) The costs of this application shall be costs in the main appeal.

35. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **16TH** day of **APRIL, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Mr. Bett for Respondents.

No appearance for Appellant/Applicant.

Court Assistant - Laban.