

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC CASE NO. 68 OF 2020

Estate of the late KAPELINGOROK ARIANGATOM
(Represented by SAMUEL P. KAPELONGOROK AND
CHRISTOPHER K.ARIANGATOM-----
PLAINTIFF/APPLICANT

VERSUS

CHEPAYOS KEMERINYANG-----1ST
DEFENDANT/RESPONDENT

CHEPKOPEGH GROUP RANCH-----2ND
DEFENDANT/RESPONDENT

RULING

1. Through an application dated **22/1/2026**, this court is asked to stay the execution of the judgment delivered on **17/12/2025** pending an intended appeal or, in the alternative, issue an order of maintenance of status quo. The grounds are that the typed proceedings have yet to be provided, despite having filed a notice of appeal dated **22/12/2025**; the County Surveyor, West Pokot, is scheduled to visit land parcel number **West Pokot/Chepkopegh/1**, to implement the judgement on **23/1/2026**; there are developments on the land, belonging to the applicant that could be demolished and that the occupants risk being evicted while there are no

eviction notices under **Section 152E** of the Land Act, which will occasion them substantial loss.

2. The applicants aver that the estate of the deceased has lived on the suit land since **1974**, and that the 1st respondent had been permitted to be a squatter from **1981** to **1990**, whereafter she moved out together with her family; the appeal shall be rendered nugatory, the application is filed without unreasonable delay, and that they are ready to provide security.
3. The applicants depose that enforcement of the decree or judgment of this court will involve subdividing the suit land into two and evicting members of their families. The applicants have annexed the draft memorandum of appeal and a surveyor's letter dated **15/1/2026**, requesting the OCS Chepareria to provide security which, according to them, does not qualify as a notice under the law, marked **SPK7** and **SPK8**.
4. The application is opposed by the respondent through an affidavit sworn by the 1st respondent on **13/2/2026**. The respondents depose that the application has been filed after an inordinate delay of **35** days; the court in its judgement has validated the decision made on **25/5/2018** by the 2nd respondent, sharing of the suit land between the applicant's father and the 1st

respondent's husband, and that no eviction orders were sought.

5. The respondents depose that the applicants have failed to demonstrate substantial loss or the irreparable loss that is likely to occur if stay orders are denied. Further, it is deposed that the applicants have not provided security for the due performance of the decree; the 1st respondent should be allowed to enjoy the fruits of her judgment.
6. In the written submission dated **16/2/2026**, the applicants submit that they have met the conditions under **Order 42 Rule 6** of the Civil Procedure Rules, and the respondents have not complied with **Section 152E** of the Land Act. There is no delay in filing this application, and the applicants shall be evicted from half the suit land, thus occasioning them loss since eviction will be irreversible.
7. On security for costs, the applicants submit that the suit land is not titled for them to offer to deposit the title in court. The applicants rely on **Kitale ELC No. E008 of 2024 Kenneth Shitsugane Olembo -vs- Nasongo Nalanda.**
8. On the other hand, the respondents rely on written submissions dated **16/2/2026**. On whether the

applicants have met the conditions for grant of stay orders under **Order 42 Rule 6** of the Civil Procedure Rules, the respondents submit that the applicants have not demonstrated what substantial loss they stand to suffer since execution is a lawful process where a successful litigant ought to be allowed to enjoy the fruits of their judgment.

9. The respondents submit that the applicants have failed to give reasons for the delay in filing this application, having filed the notice of appeal on **22/12/2025**. On security, the respondents submit that the applicants have not attached evidence of the same. Reliance is placed on **Eldoret ELC 200 of 2012 Jasber Mohen Ali & Another -vs- Pricillah Boit & Another.**
10. On the prayer to maintain the status quo, the respondents submit that the applicants are in occupation, having evicted the 1st respondent from the suit land, and therefore the applicants want to bar the 1st respondent from accessing her share of the suit land. Reliance is placed on **Limangura Nguramuk -vs- Joseph Kilekwang Kitale ELC E027 OF 2013,** where the court cited **Dodhia -vs- Wafula (2025) eKLR.**
11. Stay of execution is provided under **Order 42 Rule 6** of the Civil Procedure Rules. An applicant must show that

substantial loss may result unless the order is made; the application must be made without unreasonable delay, and lastly, security for the due performance of the decree must be availed. The Court of Appeal in **Butt - vs- Rent Restriction Tribunal [1979] eKLR**, held that the grant or denial of stay orders is at the discretion of the court, which discretion the court should exercise in such a way as to prevent an appeal from being rendered nugatory; stay orders should not be denied because better remedies exist and a court must consider the special circumstances and order for security for costs. The court also held that failure to provide the security as ordered may result in a lapse of the stay orders.

- 12.** Regarding undue delay, the judgment was entered on **17/12/2025**. The notice of appeal was filed on **22/12/2025**, while this application was filed on **22/1/2026**. The delay is for about one month. The applicants attribute the delay to not having obtained the typed proceedings from the court's registry. I do not find the delay inordinate.
- 13.** Substantial loss is a qualitative concept rather than a mathematical formula, one that is of real value and not merely nominal, as held by Ogolla J, in **Tropical Commodities Suppliers Ltd & Others -vs-**

International Credit Bank Ltd (in liquidation) [2004] 2 EA 331. In **James Wangalwa & Another - vs- Agnes Naliaka Cheseto [2012] eKLR**, the court held that execution is a lawful process and does not by itself amount to substantial loss. The court held that an applicant must show how the very essential core of the substratum of appeal will be negated or changed in the absence of a stay order. Demonstration of vitiating factors is what the applicant has to show why the respondent should be kept away from the fruits of his judgment.

- 14.** Security for the due realization of the decree, should the appeal not succeed, is a condition precedent. The applicants have not offered any security other than stating that they are ready and willing to offer as the court may direct. It is not for the court to suggest the nature of security, but for a party to avail or make an offer commensurate with the decree.
- 15.** It is not enough to allege impeding execution, which is a lawful process. Equally, it is not enough to allege occupation without showing when it started and on what justification. The applicants herein have not given evidence of the impending execution by eviction, which, in any case, the respondents have stated that no such

orders have been sought or granted. The applicants are merely apprehensive, and that does not amount to substantial loss. Clearly, the applicants have not met the threshold to warrant a stay of execution.

- 16.** Concerning maintenance of the status quo, the applicants have not defined what the status quo is at the moment, for the court to decide. Stopping execution of a court decree, as held in **Dodhia -vs- Wafula [2025] eKLR**, is not in the interest of justice unless exceptional circumstances exist why the successful party should be told to put a decree in abeyance.
- 17.** The upshot is that the application dated **22/1/2026** lacks merit and is dismissed with costs.
- 18.** Orders accordingly.

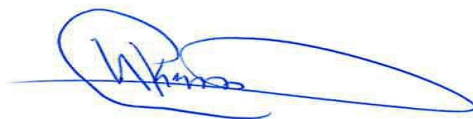
Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 22nd day of April 2026.

In the presence of:

Court Assistant – Dennis

Mr. Kiarie for the plaintiff/applicant present

Sugut for the defendant/respondent present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**