



**Ibrahim v Korugari (Environment and Land Appeal E036 of 2025)
[2026] KEELC 2114 (KLR) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2114 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E036 OF 2025
EC CHERONO, J
APRIL 16, 2026**

BETWEEN

NJOKA IBRAHIM APPELLANT

AND

PETERSON NGOROI KORUGARI RESPONDENT

(Being an appeal against the Judgment of the Magistrate Court ELC Division at Embu MC ELC No. E016 of 2024 delivered on 12th May, 2025 by Hon. Atieno Joan Otieno)

RULING

1. The Appellant/Applicant moved this Court by way of a Notice of Motion dated 28th May, 2025 brought under certificate of urgency seeking principally an order for stay of execution of the judgment delivered in Embu MC ELC No. E016 of 2024 on 12th May, 2025 pending the hearing and determination of both the application and the appeal. The Applicant also seeks costs of the application.
2. The application is premised on the grounds appearing on its face and supported by the affidavit sworn by the Applicant, Njoka Ibrahim, on 28th May, 2025. The Applicant deposes that the Respondent filed suit against him on 3rd April, 2024 and upon hearing, the trial court delivered judgment on 12th May, 2025 in favour of the Respondent granting, inter alia, an eviction order against him from the suit property together with costs and interest. Being aggrieved by the said judgment, the Applicant lodged an appeal dated 26th May, 2025 and applied for typed proceedings in readiness for preparation of the record of appeal.
3. The Applicant further avers that his counsel was unable to attend the delivery of the judgment due to technical challenges and therefore did not seek stay of execution before the trial court. He contends that the Respondent is at liberty to execute the decree, including eviction, which would render the appeal nugatory. He states that he has lived on the suit property with his family for over forty years and has heavily invested in the same and that eviction would occasion irreparable loss. He asserts that



he has an arguable appeal and that the application has been brought without undue delay. Annexed to the affidavit are copies of the defence and counterclaim, the impugned judgment and decree, the memorandum of appeal and the letter requesting proceedings.

3. Despite being granted an opportunity, the Respondent did not file any replying affidavit or submissions to oppose the application.
4. I have considered the application, the supporting affidavit, the annexures thereto and the fact that the application is unopposed. The issue for determination is whether the Applicant has satisfied the conditions for grant of stay of execution pending appeal.
5. The applicable law is Order 42 Rule 6(2) of the Civil Procedure Rules which provides that no order for stay of execution shall be made unless the court is satisfied that substantial loss may result to the applicant unless the order is made, the application has been made without unreasonable delay, and such security as the court orders for the due performance of the decree has been given.
6. The principles governing grant of stay pending appeal are now well settled. The Applicant must demonstrate substantial loss, file the application without unreasonable delay, and be willing to furnish security. These principles were emphasized by the Court of Appeal in numerous decisions, including *Butt v Rent Restriction Tribunal* [1982] KLR 417, where the court stated that the power to grant stay is discretionary and should be exercised in a manner that does not render an appeal nugatory while balancing the rights of the parties.
7. On the question of delay, the judgment sought to be stayed was delivered on 12th May, 2025 while the present application was filed on 28th May, 2025. The period between the two dates is approximately sixteen days. In my view, this delay is not inordinate and has been reasonably explained. The application was therefore brought timeously.
8. On substantial loss, the Applicant deposes that the decree issued includes an eviction order. He further states that he has resided on the suit property for over forty years together with his family and has made substantial developments thereon. Eviction from land, particularly land alleged to be ancestral or long-occupied, is capable of causing substantial and irreparable loss. If the Applicant is evicted before the appeal is heard, the subject matter of the appeal would be altered and the appeal, if successful, may be rendered nugatory. Courts have consistently held that eviction from land constitutes substantial loss in appropriate circumstances. I am therefore satisfied that the Applicant has demonstrated the likelihood of substantial loss.
9. With regard to security, the Applicant has not expressly offered security. However, the requirement for security is discretionary and depends on the nature of the decree. The decree herein is not purely monetary but involves eviction from land. In such circumstances, courts have held that appropriate conditional orders may be imposed to balance the interests of the parties. The court must ensure that the Respondent is not prejudiced by the delay in enjoying the fruits of his judgment.
10. The Respondent did not oppose the application and did not demonstrate any prejudice he would suffer if stay is granted. In the absence of opposition, and considering the nature of the decree, it is appropriate to grant stay on reasonable terms.
11. In the circumstances, I find that the Applicant has satisfied the conditions for grant of stay of execution pending appeal.
12. Accordingly, the Notice of Motion dated 28th May, 2025 is allowed on the following terms:
 1. There shall be a stay of execution of the judgment and decree in Embu MC ELC No. E016 of 2024 delivered on 12th May, 2025 pending the hearing and determination of this appeal.



2. The Applicant shall not alienate, transfer, lease, charge or in any manner dispose of the suit property pending determination of the appeal.
3. The Applicant shall ensure that the appeal is prosecuted expeditiously and shall file and serve the record of appeal within sixty (60) days from the date hereof.
4. In default of compliance with order (3) above, the stay granted herein shall automatically lapse.
5. Costs of the application shall abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT EMBU THIS 16TH DAY OF APRIL 2026.

HON. E.C CHERONO ELC JUDGE

In the presence of;

1. Mr Ileri for the Applicant
2. Respondent/Applicant-absent
3. Diana Kemboi C/A

