

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE

ELC APPEAL NO. E045 OF 2025

JOSEPH **KANYUA**
MWANGI-----**APPELLANT/APPLICANT**

VERSUS

CHARLES O. OGECH-----
RESPONDENT

RULING

- 1.** The appellant, by an application dated **27/1/2026**, seeks a stay of execution of the lower court decree by way of a notice to show cause, pending the hearing and determination of this appeal. The reasons are contained on the face of the application and in a supporting affidavit sworn by Joseph Kanyua Mwangi on the even date.
- 2.** The appellant deposes that his application seeking to set aside the lower court decree made on **14/9/2010**, regarding L.R. No. **Sinyerere/Kipsaina Block 2/Kesogon/501**, the suit land, was dismissed on **2/12/2025**, as per a copy of the ruling, decree, and notice of motion attached as **JKW-1(a)** and **(b)**, and **(2)**. The

- appellant deposes that he was neither a party to the tribunal proceedings nor the award adoption.
3. The appellant deposes that the notice to show cause was to evict him from the suit land, as per the application for eviction and notice to show cause attached as **JKW-(4)**, yet he has a pending appeal.
 4. The appellant deposes that the eviction will occasion him substantial loss, for he has lived on the suit land alongside his family for over **10 years**, he was not aware of the suit, he lawfully owns the suit land whose title has never been cancelled since issuance on **30/6/2010**, as per annexure marked **JWK-(5)**.
 5. Further, the appellant deposes that though his judicial review application was dismissed for non-attendance, it does not cure the illegality of the process to which he was not a party or privy to the Land Disputes Tribunal proceedings. The appellant deposes that the inclusion in this adoption was the judgment debtor's scandalous, frivolous, vexatious, and an abuse of the court process, and is aimed at embarrassing him.
 6. The appellant deposes that the respondent is the lawful owner of **Sinyerere/Kipsaina Block 2/Kesogon/596** after subdivision, and to claim

his land is tantamount to unjust enrichment as per annexure marked **JKW-(6)**. The appellant deposes that the application is filed without unreasonable delay and he is willing to put up such security as the court may order.

7. The application is opposed through a replying affidavit of Charles Ongwae Ogechi, sworn on **16/2/2026**. It is deposed that the appellant was fully aware of the Land Disputes Tribunal proceedings after which he instituted **Kitale HC JR No. 64 of 2010** and obtained leave to quash the decree, a copy attached as **COO-(1)** and **(5)**, against an explicit decree attached as **COO-(2)**, binding him.
8. Further, the respondent deposes that after subjecting himself to the judicial review proceedings, the applicant failed to prosecute it until it was dismissed for want of prosecution on **12/7/2017** as per annexure **COO-(3)**. The respondent deposes that thereafter the appellant voluntarily settled the taxed costs of **Kshs. 35,486/=** on **20/2/2025** as per annexure marked **COO-4(a) and (b)**.
9. The respondent deposes that any argument by the applicant invoking **Section 4(4)** Limitation of Actions Act is misplaced and legally untenable, as

the period of limitation was suspended while the judicial review proceedings were pending, and therefore, execution lawfully resumed or commenced after the dismissal of the judicial review proceedings on **12/7/2017**, which is to date less than **12 years**.

- 10.** The respondent deposes that the appellant has not met the grounds of substantial loss or offered security, and therefore, the court has no powers to stay the execution of the notice to show cause since there is a statutory procedure to challenge the decree. The respondent deposes that orders of stay are an indirect challenge to the Land Disputes Tribunal award already adopted as a judgment of the court, which has not been challenged as per the procedure then in place under **Sections 7(2)** and **8(1)** of the repealed Land Disputes Tribunal Act.
- 11.** The respondent deposes that the judicial review proceedings having been dismissed, the applicant cannot invoke the court to create a third avenue of relief where none exists.
- 12.** The appellant relies on written submissions dated **13/2/2026**, which, before this court, Mr. Mukabane advocate, orally expounded. Reliance is placed on **Elena D. Korir -vs- Kenyatta**

University [2014] eKLR and **James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2012] eKLR.**

- 13.** The respondent relies on written submissions dated **16/2/2026**, which Mr. Samba advocate referred to before this court. Reliance is placed on **Tassam Logistics Ltd -vs- David Macharia & Another [2018] eKLR, James Wangalwa & Another -vs- Agnes Naliaka (supra), Njihia -vs- Mwangi [2024] KEELC 3303 [KLR] (11th April 2024) (Judgment), Sally Jemeli Korir & Another -vs- William Suter & 2 Others [2020] eKLR, Christopher Wafula Mutoro -vs- Richard Lordia Lokere [2017] eKLR, Orange Motika -vs- David Oketch Achieng [2012] eKLR** and **Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank & 2 Others [2012] eKLR.**
- 14.** A party seeking a temporary order of stay of execution has to meet the conditions of **Order 42** of the Civil Procedure Rules. The application must be made within a reasonable time. The law has not set what the maximum or minimum delay is. It all depends on the circumstances of each case. The decree sought to be executed was issued on **14/9/2010**. The burden is on the appellant to

demonstrate the reason for the delay. A reasonable reason for delay must be offered to the satisfaction of the court, as held in **Nicholas Salat -vs- Independent Electoral and Boundaries Commission [2014] eKLR.**

- 15.** In **Muya -vs- Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya Judge of the High Court, Petition No. 4 of 2020 [2022] KESC 16[KLR]**, the court held that in determining whether there is inordinate delay, focus should not be on the length of the delay per se, but also the justification and the reason which in turn must be rational and plausible.
- 16.** In **Karani -vs- Judicial Service Commission Petition No. 3 of 2021 [2022] KESC 37 [KLR]**, the court held that where there is a delay, the court must interrogate whether the same is justifiable and thus excusable or not, looking at the circumstances of each case.
- 17.** Looking at the circumstances of this case, it is not disputed that after the decree dated **14/9/2010**, the appellant lodged judicial review proceedings, which terminated on **12/7/2017**. Between **2017** and the filing of the application dated **27/10/2025**, the period is **8 years**.

- 18.** The appellant in paragraphs **3, 6 (f),** and **9** of the supporting affidavit admits the dates of the decree, existence of his judicial review, and the dismissal thereof for want of prosecution. He, however, says the mistake of counsel should not be visited upon him or used to cure an illegality.
- 19.** In **Gaciani & 11 Others -vs- Kimanga & Another [2023] KESC 23 [KLR]**, the court held that whereas mistakes of an advocate ought not to be visited upon a litigant, there must be cogent and credible evidence. The burden is on the appellant to show that he made efforts or due diligence to follow up on his advocates or pursue his rights.
- 20.** As held in **George Kangethe Waruhiu vs Ester Nyamweru Mucene & Another [2021] eKLR**, it is not enough for a party to simply blame the advocate on record for all manner of transgressions. A case belongs to a party. A party has a responsibility to show interest in and follow up on their cases even when they are represented by counsel. It does not matter whether a party is literate or not.
- 21.** In this application, the appellant does not explain what action he took between **2017** and the filing of the execution proceedings against him. **8**

years is a long time when the appellant knew that a lawful decree of a competent court was hanging over his head.

- 22.** On substantial loss, the same is the cornerstone of stay as held in **Kenya Shell Ltd -vs- Karuga [1986] KLR 410.** It must be demonstrated with tangible and cogent evidence. It is not enough to allege that there is an impending execution, as held in **Wangalwa & Another -vs- Cheseto (Supra).** As held in **Samvir Trustee Ltd -vs- Guardian Bank Ltd [2007] eKLR,** it must be demonstrated that it will result in the absence of stay orders.
- 23.** In this application, the appellant says that he has lived on the suit land alongside his family for ten years. He says he now risks eviction as per the annexed notice to show cause and an application for execution dated **11/7/2025.** One of the curious things I find disturbing is whether **Section 152A-F** of the Land Act has been complied with, given that the decree dated **14/9/2010** is between Charles Magwae Ogechi versus Daniel K. Bor.
- 24.** The other issue raised by the appellant is the legality of the proceedings before the trial court. The respondents have extensively submitted on

the application of the repealed Land Disputes Tribunal Act and execution of its resultant decree after **12 years**.

25. The appellant has insisted that he is the lawful owner of the suit land, which was affected by the decree without his fundamental rights and freedoms as an owner being protected.
26. The respondent urges the court to find it lacks jurisdiction to entertain an appeal which indirectly seeks to challenge the Land Disputes Tribunal award outside the framework set in **Sections 7(1) and 8** of the repealed Land Disputes Tribunal Act.
27. The court is invited to be guided by **Njihia -vs- Mwangi** (*supra*), **Sally Jemeli Korir & Another -vs- William Suter & Others** (*supra*), **Christopher Wafula Mutoro -vs- Richard Lordia Lokere** (*supra*), and **Orenge Motika -vs- David Oketch Achieng** (*supra*).
28. In **Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank** (*supra*), the court said that jurisdiction is everything and flows from either the Constitution or statute. Jurisdiction goes to the very heart of a matter and the court.
29. This court has looked at the title deed attached belonging to the appellant. It was issued on

30/6/2010. The award of the Land Disputes Tribunal was made on **6/7/2010** and adopted by the lower court on **14/9/2010**. The issue of whether the Land Disputes Tribunal had jurisdiction to deal with titled land will definitely affect the decree of the lower court and its resultant execution. In paragraphs **6(a), (b), and (c)** of the supporting affidavit, the appellant, in my view, has tied all those issues to demonstrate substantial loss if the execution proceeds before the issues are determined on appeal.

30. The purpose of security is to ensure that the respondent is guaranteed the execution should the appeal not succeed. See **Arun C. Sharma - vs- Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 others [2014] eKLR.** The appellant has offered security.

31. The upshot is that the execution of the decree by way of a Notice to Show Cause is suspended for **6 months** only. The appellant is ordered to surrender the original title deed for the L.R. No. **Sinyerere/Kipsaina Block 2/Kesogon/501**

before the court within **7 days** from the date hereof; otherwise, the stay orders shall lapse.

32. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft**

Teams/Open Court at **Kitale** on the **22nd** day of **April 2026**.

In the presence of:

Court Assistant - Dennis

Miss Nafula for the respondent present

Mukabane for the applicant present



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