

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**  
**E.L.C.L APPEAL NO. E044 OF 2025**

**LABAN KINYUA NAMU .....**  
**APPELLANT/APPLICANT**  
**VERSUS**  
**MARTIN MUGAMBI NJERU .....**  
**RESPONDENT**

**RULING**

The Appellant/Applicant vide a Notice of Motion dated 23rd July 2025 seeks the following orders:

1. THAT this Honourable Court be pleased to grant stay of execution of the judgment and decree delivered on 10th June 2025 in Runyenjes SPM ELC Case No. 10 of 2020 pending the hearing and determination of this appeal.
2. THAT the status quo be maintained pending the hearing and determination of the appeal.
3. THAT costs of the application be in the cause.

The application is premised on the grounds appearing on its face and supported by the affidavit of the Appellant sworn on 23rd July 2025.

**Background**

The Applicant deposed that judgment was delivered on 10th June 2025 in Runyenjes SPM ELC No. 10 of 2020 in favour of the Respondent, granting eviction orders against him within forty-five (45) days and a stay of execution of thirty (30) days. He averred that he has occupied the suit property since 2006 where he has established his permanent home, and that unless stay is granted, he risks eviction which would render his appeal nugatory.

The Applicant further deposed that he has filed a Memorandum of Appeal and requested certified proceedings which are yet to be availed. He also stated that he filed an application before the trial court seeking extension of stay but the same had not been acted upon. He expressed willingness to abide by any conditions that may be imposed by the Court.

When the application came up for hearing on 18th February 2026, the Respondent neither appeared nor filed any response. The Court being satisfied that service had been effected allowed the application to proceed ex parte.

The single issue for determination is whether the Applicant has satisfied the conditions for grant of stay of execution pending appeal.

The principles governing stay of execution pending appeal are set out under **Order 42 Rule 6(2) of the Civil Procedure Rules**, which provides that:

- a) The court must be satisfied that substantial loss may result unless the order is made;
- b) The application must be made without unreasonable delay; and
- c) Such security as the court orders for due performance of the decree must be given.

These principles have been reiterated in numerous decisions including *Butt v Rent Restriction Tribunal [1982] KLR 417* and *Halai & Another v Thornton & Turpin (1963) Ltd [1990] KLR 365*, where courts emphasized that the purpose of stay is to preserve the subject matter pending appeal.

## **Analysis**

### **(a) Substantial Loss**

The Applicant deponed that he has been in occupation of the suit property since 2006 and has established his permanent home thereon. He further stated that he faces imminent eviction together with his family. Eviction from residential land where one has established a home constitutes substantial loss. If eviction were carried out before determination of the appeal, the substratum of the appeal would be destroyed. This Court is therefore satisfied that the Applicant has demonstrated substantial loss.

**(b) Delay**

Judgment was delivered on 10th June 2025. The present application was filed on 23rd July 2025. Taking into account that the Applicant sought proceedings, filed an appeal and attempted to obtain extension before the trial court, the delay of approximately six weeks is not inordinate. The Court therefore finds that the application was filed without unreasonable delay.

**(c) Security**

The Applicant has indicated willingness to abide by any conditions imposed by the Court. The requirement for security is discretionary and intended to balance the interests of both parties. Considering the nature of the decree being eviction from land, the Court finds that an order preserving the status quo will sufficiently safeguard the interests of justice.

**Determination**

Having considered the application, the supporting affidavit, the absence of opposition, and the applicable law, this Court is satisfied that the Applicant has met the threshold for grant of stay of execution pending appeal.

Consequently, the Notice of Motion dated 23rd July 2025 is allowed in the following terms:

1. There shall be a **stay of execution** of the judgment and decree delivered on 10th June 2025 in Runyenjes SPM ELC Case No. 10 of 2020 pending the hearing and determination of this appeal.
2. The **status quo obtaining on the suit property** as at the date of this ruling shall be maintained pending the hearing and determination of the appeal.
3. The Appellant/Applicant shall ensure that the appeal is prosecuted expeditiously and shall file the record of appeal within sixty (60) days from the date hereof.
4. Costs of the application shall be in the cause.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

**HON E.C CHERONO  
ELC JUDGE**

In the presence of;

1. M/S Nekoye for the Appellant/Applicant

2. Respondent/Advocate-absent
3. Diana Kemboi C/A