

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
E.L.C APPEAL NO. E030 OF 2025

HARRISON NJOKA
NDONGI'ORA.....APPELLANT/APPLICANT
VERSUS
JANE MUTURI NYAGA.....1ST
RESPONDENT
LYDIA NJIGI NJIRU.....2ND
RESPONDENT
JOSELINE MBANDI MUKIRI.....3RD
RESPONDENT
PETERSON MBOGO MWARAKITHIA.....4TH
RESPONDENT

RULING

The application before this Court is the Notice of Motion dated 3rd September 2025 brought under certificate of urgency in which the Appellant/Applicant seeks the following orders:

1. THAT this application be certified urgent and heard ex parte in the first instance.
2. THAT the status quo be maintained pending the hearing and determination of this application and appeal.
3. THAT this Honourable Court be pleased to stay the orders issued by Hon. E.W. Wasike in her judgment delivered on 17th

November 2022 in MLC & E No. 17 of 2020 pending the hearing and determination of this application and appeal.

4. THAT costs of this application be provided for.

The application is supported by the grounds on its face and the supporting affidavit sworn by the Appellant/Applicant who deposes that judgment was delivered against him in MLC & E No. 17 of 2020 directing his eviction from land parcel **MBEERE/RIACHINA/2067**. He states that he has lodged an appeal against the said judgment which raises arguable points of law and fact. He further deposes that unless stay is granted, the Respondents are likely to subdivide and dispose of the suit property thereby rendering the appeal nugatory and occasioning him substantial loss including deprivation of his home and livelihood.

The Respondents opposed the application through a Replying Affidavit sworn by their advocate, NJERU ITHIGA, who stated that the Respondents do not oppose the grant of stay provided that the Applicant deposits security for the due performance of the decree as required under Order 42 Rule 6(2) of the Civil Procedure Rules.

Both parties filed written submissions which I have carefully considered.

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

The principles governing grant of stay pending appeal are provided under Order 42 Rule 6(2) of the Civil Procedure Rules which stipulates that:

No order for stay shall be made unless the Court is satisfied that:

- a) Substantial loss may result to the applicant unless the order is made;
- b) The application has been made without unreasonable delay; and
- c) Such security as the Court orders for the due performance of the decree has been given by the applicant.

These principles have been restated in numerous decisions including *James Wangalwa & Another vs Agnes Nalika Cheseto (2012)* where the Court held that the Applicant must demonstrate substantial loss and that the purpose of stay is to preserve the subject matter of litigation so that the appeal is not rendered nugatory.

Analysis

(a) Whether the Applicant will suffer substantial loss

The Applicant contends that he risks eviction from the suit property and that the Respondents have commenced subdivision

of the land. The decree appealed from directed eviction. If execution proceeds and the Applicant is evicted and the land subsequently subdivided or transferred, the substratum of the appeal may be lost.

Courts have consistently held that eviction from land constitutes substantial loss, particularly where the applicant is in occupation. In my view, eviction coupled with the possibility of alienation of the suit property would render the appeal nugatory. I am therefore satisfied that the Applicant has demonstrated substantial loss.

(b) Whether the application was filed without unreasonable delay

The Respondents submitted that there was delay as the judgment was delivered on 17th November 2022 while the present application was filed on 3rd September 2025. While there appears to be delay, it is also clear from the record that the Respondents themselves have not strongly opposed the grant of stay but have instead sought security.

The Court retains discretion in determining whether delay is fatal. In the circumstances of this case, and considering that execution appears imminent and that the subject matter is land, I find that the delay, though not explained in detail, is not so inordinate as to deny the Applicant an opportunity to ventilate his appeal,

especially where the Respondents can be compensated through security.

(c) Security for due performance

The Respondents have expressly indicated that they do not oppose the application provided security is furnished. The Applicant did not propose security but the Court has discretion to impose appropriate conditions.

Security serves to balance the interests of both parties. It ensures that the Respondents, as successful litigants, are protected while preserving the appeal.

Determination

Having considered the application, affidavits, submissions and the law, I find that the Applicant has satisfied the conditions for grant of stay of execution pending appeal.

Accordingly, the Notice of Motion dated 3rd September 2025 is allowed on the following terms:

1. There shall be a stay of execution of the judgment and decree in MLC & E No. 17 of 2020 pending hearing and determination of this appeal.
2. The status quo obtaining on land parcel **MBEERE/RIACHINA/2067** shall be maintained pending hearing and determination of the appeal.

3. The Appellant/Applicant shall deposit security for the due performance of the decree in the sum of **Kshs. 200,000/=** in Court within forty-five (45) 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
ENVIRONMENT AND LAND COURT

In the presence of;

1. M/S Mwinja H/B for Njeru Ithiga for the Respondent
2. Applicant in person-present
3. Diana Kemboi C/A