



**Pere v Wambui (Environment and Land Appeal E016 of 2026)
[2026] KEELC 2078 (KLR) (15 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2078 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E016 OF 2026**

MD MWANGI, J

APRIL 15, 2026

BETWEEN

CATHEREN NJOKI PERE APPELLANT

AND

JOSEPH WANDERI WAMBUI RESPONDENT

RULING

(In respect of the Appellant's Notice of Motion dated 12th March 2026, brought under sections 1A, 1B, 3A and 79G of the [Civil Procedure Act](#) and Order 42 rule 6 of the Civil Procedure Rules)

Introduction

1. Before this Court for determination is the Notice of Motion dated 12th March 2026, brought by the Appellant/Applicant, Catherine Njoki Pere. The application seeks orders for stay of execution of the ex-parte orders issued by the Honourable Charles Ariba Kutwa (Chief Magistrate) on 25th February 2026 in Ngong Law Court Civil Miscellaneous Application No. E018 of 2026 and any consequential orders arising therefrom and further an order restraining the Respondent from entering, interfering with, or doing any act on the suit property pending the hearing and determination of the appeal.
2. The genesis of this matter, as captured in the pleadings, is a dispute over the ownership and possession of land parcel Title Number Ngong/Ngong/106043 (hereinafter "the suit property"). The impugned orders of the trial court directed the Applicant to deliver vacant possession of the suit property to the Respondent.
3. The Applicant further challenges the directions issued by the trial court on 10th March 2026, which scheduled the hearing of her setting-aside application for 2nd April 2026 but declined to grant interim protection in the intervening period.



4. The Applicant's case, as set out in her Supporting and Supplementary Affidavits, is anchored on the assertion that she was never served with the primary application or the resulting court orders until 7th March 2026, when she was served with an eviction notice by the Respondent who was in the company of police officers. She contends that she is the lawful owner of the property and that the purported Sale Agreement dated 12th August 2025, relied upon by the Respondent, is a product of fraud. It is her position that she only handed over her title deed as a security for a loan of Kshs. 1,500,000/= and never intended to sell her family home. She argues that unless a stay is granted, she will suffer substantial and irreparable loss through eviction and the potential demolition of her home, rendering her intended appeal nugatory.
5. The Respondent vigorously opposes the application through a Replying Affidavit sworn on 18th March 2026. The Respondent maintains that he is the legitimate registered owner of the suit property, having purchased it from the Applicant for a consideration of Kshs. 6,500,000/=. He asserts that the sale was witnessed by an advocate and that the Applicant's claims of fraud are a late-stage fabrication. On procedural grounds, the Respondent argues that the application is an abuse of the court process as the Applicant is simultaneously pursuing a setting-aside/review application in the lower court, thereby engaging in "forum shopping" and creating a risk of conflicting decisions.
6. In response to the Respondent's objections regarding the multiplicity of proceedings, the Applicant clarifies in her Supplementary Affidavit that the remedies of review and appeal are distinct and concurrent. She asserts that the urgency of the threat of eviction justified the filing of this appeal and the instant application for stay, as the trial court failed to provide immediate injunctive relief to preserve the status quo.

Directions

7. The application was canvassed by way of written submissions, the submissions of which were duly considered in the writing of this ruling.

Issues for Determination

8. Following the Applicant's filing of a Notice of Withdrawal in respect of the review application previously pending before the trial court, the challenge regarding the multiplicity of proceedings has been spent. Consequently, the remaining and primary issues for this Court's determination are:
 - a. Whether the Applicant has satisfied the criteria for a stay of execution pending appeal under Order 42 Rule 6(2) of the Civil Procedure Rules.
 - b. Whether the Applicant is entitled to the interim orders sought.

Analysis and Determination

9. The Respondent had initially raised a preliminary objection asserting that this application constituted an abuse of the court process due to a concurrent application for review/setting aside in the lower court. However, the Applicant has since filed a Notice of Withdrawal of the said review application.
10. The legal effect of a withdrawal is to terminate those specific proceedings, thereby removing any risk of "forum shopping" or conflicting decisions. As held by the Court of Appeal in *Behan & Okero Advocates v National Bank of Kenya Limited* [2007] eKLR, a party is at liberty to withdraw a process and elect the remedy they wish to pursue. With the lower court application withdrawn, this Court is now the sole forum seized of the quest for injunctive relief, and the objection on the ground of abuse of process no longer holds water.



11. The jurisdiction of this Court to grant a stay of execution is governed by Order 42 Rule 6(2) of the Civil Procedure Rules, which sets out the mandatory conditions as follows:

“No order for stay of execution shall be made under sub rule (1) unless— (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

i. Substantial Loss

12. The Applicant contends that the suit property, Title Number Ngong/Ngong/106043, is her primary residence. She faces imminent eviction following the ex-parte orders of 25th February 2026. In the context of stay applications, "substantial loss" is established if the execution would render the intended appeal a mere academic exercise or if it would cause irreparable damage to the subject matter.

13. In *Silverstein v. Chesoni* [2002] 1KLR 867, the Court emphasized:

“The issue of substantial loss is the cornerstone of both jurisdictions... The court must be satisfied that substantial loss may result to the applicant unless the order is made.”

14. Evicting a party from their family home before the legality of that eviction is tested on appeal constitutes a classic case of substantial loss. If the home is demolished or the Applicant is displaced, a successful appeal would be a "pyrrhic victory" as the status quo cannot easily be restored.

ii. Unreasonable Delay

15. The impugned orders were issued on 25th February 2026. The Applicant explains that she became aware of the threat on 7th March 2026 and moved this Court on 12th March 2026. This Court finds that a lapse of approximately two weeks from the date of issuance of the order, and only five days from the date of knowledge, does not constitute "unreasonable delay." The Applicant acted with the urgency the situation demanded.

iii. Security for Due Performance

16. The Respondent asserts that he paid Kshs. 6,500,000/= for the land. The Applicant, however, contends the transaction was a loan-security arrangement tainted by fraud. In applications involving land and eviction, the "security" is fundamentally the preservation of the land itself. Since the property is immovable and the Applicant is the one currently in possession, the most effective security for the due performance of the eventual decree is the maintenance of the status quo to ensure the property remains available for whichever party triumphs in the appeal.

17. The Court must weigh the hardship to the Respondent against the hardship to the Applicant. Given that the dispute involves a claim of fraud and a denial of the right to be heard, the balance of convenience tilts heavily towards maintaining the status quo.

18. The court is persuaded that the Applicant has successfully demonstrated that she stands to suffer substantial loss if the eviction notice is executed. Furthermore, by withdrawing the lower court application, she has cleared the procedural path for this Court to determine the stay on its merits. The interests of justice demand that the property be preserved until the appeal is determined.

19. In the final result, I make the following orders:



- A. An order of stay of execution is hereby granted staying the execution of the ex-parte orders delivered on 25th February 2026 in Ngong Law Court CM Misc. Application No. E018 of 2026, and any subsequent eviction processes, pending the hearing and determination of this Appeal.
- B. An order of maintenance of the status quo is hereby issued; the Applicant shall remain in possession of Land Parcel No. Ngong/Ngong/106043 and neither party shall alienate, charge, or further encumber the property pending the determination of the Appeal.
- C. The Costs of this application shall abide the outcome of the Appeal.
- Orders accordingly.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 15TH DAY OF APRIL 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kuria h/b for Mr. Taliti for the Respondent

N/A by the Appellant/Applicant

Court Assistant: Alex

M.D. MWANGI

JUDGE

