



**Kibet v Cherogony & 2 others (Environment and Land Case  
E34 of 2024) [2026] KEELC 2539 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2539 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E34 OF 2024  
LC KOMINGOI, J  
APRIL 30, 2026**

**BETWEEN**

**SAMMY SEGUTON KIBET ..... APPELLANT**

**AND**

**LABAN CHEPSERGON CHEROGONY ..... 1<sup>ST</sup> RESPONDENT**

**CHRISTINE J CHEROGONY ..... 2<sup>ND</sup> RESPONDENT**

**JOHN CHEROGONY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of the Notice of Motion dated 26<sup>th</sup> January 2026 brought under Section 1A,1B,3,3A and 63 (e) of the *Civil Procedure Act*, Cap 21 Laws of Kenya; Order 22 Rule 22 and 42 Rule 6 of the Civil Procedure Rules, 210 and all enabling provisions of the law).
2. It seeks orders:-
  1. Spent
  2. Spent
  3. That an order be made for the maintenance of status quo as regards parcel of land known as Kampi ya Moto/Kampi Ya Moto Block 1/1010 currently in the possession of the 1<sup>st</sup> Respondent
  4. That pending the hearing and determination of the appeal filed against the judgment dated 15<sup>th</sup> January 2026 delivered herein a stay of execution of the said judgment, the Decree arising therefrom and all consequential orders be granted.
3. The grounds are on the face of the application and are set out in paragraph 1 to 10.



4. The Application is supported by the affidavit of Laban Chepsergon Cherogony , the 1<sup>st</sup> respondent herein sworn on the 26<sup>th</sup> January 2026.
5. The Application is opposed. There is a Replying Affidavit sworn by Sammy Seguton Kibet the Appellant herein sworn on the 18<sup>th</sup> February 2026.
6. The Notice of Motion was canvassed by way of written submissions.

### **The Appellant's Submissions**

7. They are dated 18<sup>th</sup> March 2026. They raise three issues for determination
  - i. Whether there exists competent appeal.
  - ii. Whether the Applicants have satisfied the conditions under order 42 Rule 6
  - iii. Whether the application is an abuse of the Court process.
8. It is submitted that the purported Notice of Appeal has not been signed endorsed and not certified by the Deputy Registrar. That the same is fatally defective and of no legal consequence. Reliance is placed on the case of Equity Bank Ltd Vs West Link Mbo Ltd; Mae Properties Limited Vs Joseph Kibe & Another.
9. It is also submitted that order 42 Rule 6 (2) of the Civil Procedure Rules sets out mandatory conditions namely;
  - a. Proof of substantial loss.
  - b. Filing without unreasonable delay
  - c. Provision of security
10. It has been submitted that substantial loss is the cornerstone of an application for stay and stated in the case of Kenya Shell Limited Vs- Benjamin Karuga Kibiru & Another. Further that the mere allegation by the Respondents that they are in occupation and may be evicted does not amount to substantial loss. Reliance is placed on the case of James Wangalwa & Another Vs Agnes Naliaka Cheseto .
11. It is submitted that the decree herein concerns transfer of property which is Reversible and capable of compensation hence no irreparable harm has been demonstrated.
12. It is also submitted that no arguable appeal has been demonstrated as there is no draft memorandum of appeal annexed. Reliance is placed on the case of Stanley Kang'ethe Kinyanjui Vs Tony Ketter & Others.
13. It is submitted that the Respondents have not provided security for the due performance of the decree as stated in the cases of Focin Motorcycle Co. Limited Vs Ann Wambui Wangui & Another; Machira t/a Machira & Co Advocates Vs East African Standard.
14. It is submitted that the Appellant is already in possession and use of the suit property hence the orders sought have been overtaken by events.
15. It is finally submitted that this application is calculated to delay execution and frustrate the Appellant. That the conditions set out under Order 42 rule 6 of the Civil Procedure Rules have not been met. He prays that the Application be dismissed with costs.



## The Respondent's Submissions

16. They are dated 17<sup>th</sup> March 2026. It is submitted that the Respondent have set out the particulars of the substantial loss they would suffer if the application is allowed.

Reliance is placed on the Order 42 Rules 6 of the Civil Procedure Rules and the case of James Wangalwa & Another Vs Agnes Naliaka Cheseto (2012) eKLR cited with approval in Ena Investment Ltd Vs Bernard Ochau Mose & 2 Others; RWW Vs EKW (2019) eKLR.

17. It is also submitted that this application has been brought timeously and without delay having been filed eleven days after the delivery of the judgment.

18. It is also submitted that the 1<sup>st</sup> Respondent has committed not to sell or dispose the suit property pending the determination of the appeal.

Reliance is placed on the case of Absalom Dova Vs TARbo Transporters (2013) eKLR cited with approval in Wanachi Group (K) Limited & Another Vs Metrine Namulisa Musamali .

19. It is finally submitted that the Notice of Appeal was duly and timeously filed and that the Administrative process by the Deputy Registrar is outside their control

Further that the arguability or otherwise of the appeal is not factor to be determined in this application. They pray that the Application be allowed.

## Analysis and Determination

20. I have considered the notice of Motion, the affidavit in support, the response thereto the written submissions and the authorities cited. The issues for determination are:-

- i. Whether the Applicants' application has satisfied the conditions for stay of execution pending appeal.
- ii. Who should bear costs of the application

21. Order 42 rule 6 of the Civil procedure Rules provides as follows:

6. Stay in case of appeal [Order 42, rule 6]

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under subrule (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.



- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
  - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
  - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
  - (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
22. It is the Respondent's case that they are likely to suffer substantial loss if the application is not allowed. It is their case that the Appellant may transfer the land to himself and or third parties hence the subject land may not be available by the end of the appeal.
  23. The Appellant on the other hand, contends that the Respondents' mere allegation that they are in possession and may be evicted does not amount to substantial loss.
  24. As stated in the judgment of Honorable A O Ombwayo J, the Appellant is in possession of the suit property, but the Respondent's have refused to effect transfer in his favour.
  25. It is my view that the Respondents have not demonstrated that they are likely to suffer substantial loss if these orders are not granted.
  26. It is my view that the application herein has not met the conditions set out under Order 42 rule 6 (2) of the Civil Procedure Rules.
  27. I find no merit in this application and the same is dismissed with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**L KOMINGOI**

**JUDGE**

In present of :-

Mr Alusa for the Appellant

Mr Gatonye for the Respondents

Court assistant: Derick

