

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT SIAYA

ELC LAND APPEAL NO. E 048 OF 2025

GEORGE ODHIAMBO MULONDO APPELLANT
VERSUS

ALEX ONYANGO NYAWAGA 1ST
RESPONDENT

MOSES OWUOR NYAWAGA
2ND RESPONDENT

RULING

INTRODUCTION

1. The subject of this ruling is a Notice of Motion application dated 9th December 2025 by George Odhiambo Mulondo the Appellant/Applicant and the Preliminary Objection dated 5th February 2026 raised by the respondent.
2. The Applicant's sought for the following orders: -
 - 1) Spent.
 - 2) Spent.
 - 3) THAT pending the hearing and determination of this appeal, this honourable court be pleased to stay the orders issued by the trial court on the 18th July 2024.
 - 4) THAT the cost of this application be on the cause.
3. The application was premised on the Supporting Affidavit of Mr. GEORGE ODHIAMBO MULONDO sworn on the 9th December 2025. The applicant deponed that his home is located within LR: EAST UGENYA/ANYIKO/18 the suit property where he resides with his children and grandchildren. That this suit was commenced by the respondent to evict him therefrom. He annexed as POO- 1 to 3 copies of the search certificate for the suit property and photographs indicating his alleged occupation. That the judgement of the trial court ordered his eviction. He

annexed copies of judgment and Decree dated 18/7/2025 and 28/7/2025 respectively.

4. It is deponed he filed the present appeal on the 13th August 2025 and served the Land Registrar Ugenya who registered a restriction on the suit property pending the hearing and determination of the appeal as the situation on the ground involved old and ailing persons as well as children residing thereon. The request letter dated 13/8/2025 and Memorandum of Appeal dated 13h August 2025 were attached.
5. The applicant avers that the appeal has overwhelming chances of success and disregarding the appeal may cause unnecessary bloodshed and the suit property is home to many including small children. That the decree holder has no mercy and has refused to listen to the crying children and old aged persons including the applicant who is more than 80 years old.
6. Further that the decree holder had cited him for contempt of court and the hearing of the same was slated for 11th December 2025 - copies of the application dated 18/11/2025 and Court Order 20/11/2025 were attached. That unless the orders issued are granted, the appeal will be rendered nugatory.

REPLY TO THE NOTICE OF MOTION

7. The 2nd Respondent responded through a replying affidavit by ALEX ONYANGO NYAWAGA dated 12th January 2026, a Supplementary Replying Affidavit dated 5th February 2026 and a Preliminary Objection dated 5th February 2026.
8. The deponent avers that the application is incompetent, frivolous and lacks merit to warrant this courts valuable time.

That the trial court issued its judgement on 18th July 2025 and the applicant rushed to file a Memorandum of Appeal which he only served on the Land Registrar but never served the decree holders who learnt of the intended Appeal when he lodged the Decree with the Registrar at Ukwala Land Registry.

9. It is averred that upon presenting the Decree, the respondents were denied service for reasons of the purported intention to appeal by the applicant herein, however, there was no order of stay neither was there an application asking for the same and which fact prompted the respondents to file contempt proceedings against the 2nd Respondent who is the Land Registrar which was scheduled for hearing on the 11th of December 2025. it is not true that the application was in any way against the applicant.
10. It is averred the trial court heard this matter conclusively and the carefully observed every detail of the matter before pronouncing his judgement hence the appeal being preferred does not have the slightest chance of success and should not entertain this application.
11. That the applicant has not demonstrated any seriousness in lodging any appeal and merely using the same to frustrate the Respondents by using the court to delay the execution of the decree. That the Applicant is merely trying to whip up the emotions of the court by calling the Respondents merciless while forgetting the court is a court of facts and evidence.
12. That the Decree issued by the trial court is full-proof and leaves no room for any bloodshed and the allusion that there may be bloodshed is far-fetched and is only intended to scare this court,

unless the appellant / applicant is the one planning for the same.

13. It is alleged the applicant has denied the respondents right to their home illegally for far too long and to grant the orders sought would mean that the respondent continue to suffer as the applicant enjoys what he unlawfully took away.
14. The application was further opposed through Supplementary Replying Affidavit sworn by ALEX ONYANGO NYAWAGA and MOSES OWOR NYAWANGA, dated 5th February, 2026, where they averred that the applicant's application was heard ex-parte by this Honourable Court under Certificate of Urgency on the 10th December 2025. The court appreciating the urgency gave directions, that the Respondents respond within 3 days of service and which period, in the court's wisdom, was sufficient for the Respondents to file their responses, but they deliberately ensuring that the Respondents had no chance of filing any response.
15. It is averred that the 3 days given by the court would have been sufficient had the Respondents been served on time. That in blatant disregard of the court's directives and timelines, the Applicant served the Respondents at 5:28 pm outside official court hours on 17th of December 2025 which was irregular.
16. That the court duly convened on the 18th December 2025 as scheduled, without the knowledge of the Respondents since the latter became aware of the email message several days after 18/12/2025. The court gave further directives for the applicant to serve the respondent and file a return of service; the Respondents were given 14 days to respond after service which

the applicant has not complied with thus confirming that the Appeal herein being preferred is a mere waste of this honourable courts valuable time hence court and the orders of stay being are not warranted.

17. The court is urged should it be inclined to grant the orders sought, the Applicant be ordered to deposit the title deed for the suit land EAST UGENYA/ANYIKO/18 the in court as security. THAT what is deponed to herein is true to the best of our knowledge, information and belief.

THE PRELIMINARY OBJECTION BY THE RESPONDENTS.

18. The respondents filed a preliminary objection dated 5th February 2026 on the basis that
1. THAT the applicant filed a Notice of Motion, dated 9th December 2025, under Certificate of Urgency and the court issued Directions on the same which the Appellant failed and or neglected to comply with.
 2. THAT the Application herein offends Order Sections 1A, IB and 3A of the Civil procedure Act Cap 21 Laws of Kenya, Sect 42 Rule 6 and 51 Rule 1 of the Civil Procedure Rules and Article 40, 47, 48, 50 (2) and 159 of the Constitution of Kenya 2010.

SUBMISSIONS

19. The application and preliminary objection were canvassed by way of written submissions as follows;

Appellant/Applicant's Written Submissions

20. The Appellant/ Applicant through the Law Firm of *Messrs. Odhiambo Odera & Associates Advocates*, filed written

- submissions and addressed one singular issue being - Whether this Honourable Court ought to grant an order for stay of execution pending the hearing and determination of the appeal.
21. On this issue, Counsel submitted that the grant of stay of execution is a discretionary remedy which must be exercised judiciously and in accordance with established legal principles. It was argued that the Applicant has satisfied the conditions for grant of such orders.
 22. Counsel submitted that the Appellant has already filed an appeal challenging the judgment of the trial court and that the appeal raises arguable and substantial issues, including the question of ownership and occupation of the suit property.
 23. It was further submitted that the suit property constitutes the Appellant's only home and place of residence, and that execution of the trial court's orders would result in dispossession, thereby occasioning irreparable loss and rendering the appeal merely academic.
 24. Counsel argued that the substratum of the appeal would be destroyed if the Respondents are allowed to execute the decree, as the suit land may be subdivided and registered in favour of the Respondents before the appeal is heard and determined.
 25. On the issue of timelines, Counsel submitted that the appeal was filed within the statutory period provided by law and that any delay in service upon the Respondents was occasioned by logistical challenges, including difficulty in tracing the Respondents who reside approximately 300 kilometers away in Nakuru County.

26. Counsel contended that the Respondents, in their Replying and Supplementary Affidavits dated 12th January 2026 and 5th February 2026 respectively, merely raised technical objections regarding service and did not substantively address the merits of the application or demonstrate any prejudice they would suffer if the orders sought are granted.
27. It was further submitted that land matters are inherently sensitive and ought to be determined on merit rather than on procedural technicalities, and that failure to grant stay orders may result in irreversible consequences, including possible conflict and injustice.
28. Counsel emphasized that the balance of convenience tilts in favour of preserving the suit property pending the determination of the appeal, as this would ensure that the subject matter of the dispute remains intact.
29. In conclusion, Counsel urged this Court to find that the Appellant has established sufficient cause for the grant of an order for stay of execution and to allow the application in the interest of justice.

Respondents/Objectors Written Submissions.

30. The Respondents, appearing in person, filed written submissions in opposition and urged this Court to dismiss the orders sought.
31. The Respondents noted at the outset that they were not served with the application as required by law and only retrieved it from the Judiciary Portal. It was further noted that the Respondents are not aware of any properly constituted appeal before this Honourable Court, as the Memorandum of Appeal

has never been served upon them, nor have they been served with a Notice of Appeal as required under Rule 79(1) of the Court of Appeal Rules (Legal Notice No. 40 of 2022).

32. The Respondents framed the issues for determination as follows:

- i. Whether the application is properly before this Honourable Court having regard to the failure to serve the Notice of Appeal upon the Respondents.
- ii. Whether the Appellant/Applicant has surmounted the threshold for grant of stay of execution as provided under Order 42 Rule 6 of the Civil Procedure Rules, 2010.

33. On the first issue, the Respondents submitted that Rule 79(1) of the Court of Appeal Rules (Legal Notice No. 40 of 2022) obligates an intended appellant to serve copies of the Notice of Appeal on all persons directly affected by the appeal before or within seven days after lodging it. It was submitted that the Appellant has failed to comply with this mandatory requirement, and that this Honourable Court ought to invoke Rule 86(b) of the Court of Appeal Rules and strike out the appeal.

34. On the second issue, the Respondents submitted that the application is fundamentally grounded on misleading assertions. Specifically, it was contended that the contempt of court proceedings are not directed against the Appellant but against the Land Registrar, Ukwala Land Office, who was the 2nd Defendant. It was further submitted that there are no eviction orders against the appellant, and therefore there are no existing orders capable of being stayed.

35. The Respondents submitted that the Appellant has failed to satisfy any of the three prerequisites for the grant of stay of execution under Order 42 Rule 6(2) of the Civil Procedure Rules, 2010, as reinforced by the Court of Appeal in **Mukuma v Abuoga [1988] KLR 645**, namely: that the application be brought without undue delay; that substantial loss would result to the Applicant if stay is not granted; and that sufficient security for the due performance of the decree be furnished.
36. On the requirement of undue delay, the Respondents submitted that the judgment of the trial court was delivered on 18th July 2025 and that the application for stay was not filed until 9th December 2025, a period of one hundred and forty-three (143) days. It was contended that the Appellant offered no explanation in his supporting affidavit for this inordinate delay. Reliance was placed on **Jaber Mohsen Ali & Anor v Priscillah Boit & Anor ELC Eldoret E&L No. 200 of 2012**, where the court held that it is incumbent upon a litigant to move with speed and that unreasonable delay tilts the scales in favour of the opposing party.
37. On the requirement of substantial loss, the Respondents submitted that the Appellant has made only vague and general assertions without laying any factual or evidentiary basis upon which the court could find that substantial loss would result. Reliance was placed on **Gianfranco Manenthi & Antonietta Farinato v Africa Merchant Assurance Company Ltd (Malindi HCCC No. 1 of 2013)**, which held that an applicant must go beyond mere general assertions and demonstrate tangible or pecuniary loss.

38. It was further submitted that the Appellant's claim that the suit land is his only home was conclusively controverted by evidence adduced before the trial court, and that the Appellant is seeking to use this assertion to appeal to the emotions of this Honourable Court, as he had unsuccessfully attempted to do before the trial court.
39. On the requirement of security, the Respondents submitted that the Appellant has neither offered nor proposed any security for the due performance of the decree of the lower court, as required under Order 42 Rule 6(2)(b) of the Civil Procedure Rules, 2010. It was contended that the furnishing of security is a condition of good faith and that a successful litigant should not be deprived of the fruits of a judgment in their favour without just cause, as affirmed in **George Ole Sangui & 12 Others v Kedong Ranch Limited (Civil Appl. No. NAI 55 of 2015) and Butt v Rent Restriction Tribunal [1982] KLR 417.**
40. The Respondents further submitted that the Appellant's contentions regarding difficulty in effecting service upon the Respondents are false and contradicted by the record. It was pointed out that the Respondents' email address, telephone number and postal address appear on all court documents, and that the Appellant himself effected service via email on 17th December 2025, thereby making the claim that locating the Respondents was impossible wholly untenable.
41. The Respondents also drew this Court's attention to the Appellant's repeated references to the risk of bloodshed, and urged the court to treat these as veiled threats directed at the 2nd Respondent, who resides adjacent to the suit land. It was

submitted that courts determine matters on the basis of facts and evidence, not emotion or intimidation.

42. In conclusion, the Respondents submitted that the application is irredeemably defective, ill-founded, misconceived, and an abuse of the court process, and urged this Court to dismiss it with costs. In the alternative, should the Court be inclined to grant the orders sought, the Respondents prayed that the Appellant be directed to deposit the Title Deed for parcel LR EAST UGENYA/ANYIKO/18 in court pending the hearing and determination of the appeal, and that the Appellant be restrained from cutting down trees or otherwise despoiling the suit land.
43. In the premises, the Respondents humbly pray that this Honourable Court be pleased to dismiss the application with costs to the Respondents.

ANALYSIS AND DETERMINATION

44. I have keenly considered the pleadings filed by all the parties, written submissions, the relevant provisions of the law and the cited authorities.
45. Two issues commend determination: -
- a) Whether the objection raised by the 1st and 2nd Respondents/Objectors through the Notice of Preliminary Objection dated 5th February 2026 meets the threshold founded in Law and precedents.
 - b) Whether the Notice of Motion application dated 9th December 2025 has merit to warrant the grant of the orders sought.

c) Who bears the costs of the application dated 9th December 2025?

Whether the objection raised through the Notice of Preliminary Objection dated 10th September 2025 meets the threshold founded in Law and precedents.

46. The Court will first consider what amounts to a Preliminary Objection and determine whether the objection fits the said description. According to the Black Law Dictionary a preliminary objection is defined as:

In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”

47. In **Nitin Properties Ltd V Singh Kalsi & Another [1995] eKLR** the court stated thus; -

'A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.'

48. The court in **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors Ltd (1969) EA 696** described a preliminary objection as hereunder; -

'So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are

an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.'

Sir Charles Newbold, JA in the same case stated that: -

'A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.'

49. Arising from the above it is clear that a preliminary Objection must be raised on a pure point of law and no fact should be ascertained from elsewhere.
50. The first limb of the objection is that the Appellant/Applicant filed the Notice of Motion application dated 9th December 2025 under certificate of urgency, the Court issued directions thereon, and that he allegedly failed and/or neglected to comply with those directions.
51. Indeed, for this Court to uphold such an objection at the interlocutory stage, it would first have to establish, as matters of fact, the precise directions that were issued on 10th December 2025, the timelines within which service was to be effected, whether service was indeed effected outside the timelines, whether there was partial compliance, whether there

was subsequent regularization by the Court, and whether any prejudice was thereby occasioned to the Respondents. These call for examination of affidavits of service, court proceedings, email transmissions, and the conduct of the parties after the impugned service. Such an inquiry takes the matter outside the province of a preliminary objection.

52. Moreover, where a party alleges non-compliance with court directions, the Court is ordinarily invited to exercise discretion upon considering the surrounding circumstances, including the nature of the default, the explanation tendered, whether the non-compliance is intentional, and whether the same is curable without prejudice to the opposite party. Once judicial discretion is implicated, the matter ceases to qualify as a true preliminary objection.
53. The second limb of the objection is framed in even broader terms, namely, that the application offends Sections 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, and Articles 40, 47, 48, 50(2) and 159 of the Constitution of Kenya, 2010. With tremendous respect to the Respondents, that omnibus pleading does not of itself disclose a crisp, identifiable, and self-sustaining point of law. It merely cites a multiplicity of provisions without demonstrating, with precision, the exact legal defect that would dispose of the application in limine.
54. A proper preliminary objection must not only raise a pure point of law, but it must also do so with sufficient particularity so that the opposite party and the Court may appreciate the exact legal issue for determination. A generalized statement that an

application “offends” numerous statutory and constitutional provisions is not enough. The Court is not expected to speculate which of those provisions has allegedly been violated, in what manner, and with what legal consequence.

55. The inclusion of Articles 40, 47, 48, 50(2) and 159 of the Constitution does not improve the objection. Constitutional provisions, especially those touching on property rights, fair administrative action, access to justice, fair hearing, and the administration of justice, cannot be cited in the abstract as a weapon to defeat proceedings at interlocutory stage without demonstrating a clear and uncontested legal contradiction. In most cases, their invocation requires contextual examination of facts and competing rights. That again takes the matter beyond the strict province of a preliminary objection.
56. I have also considered the Respondents’ written submissions where, in addition to the objection on service, they argued that no proper appeal exists because the Memorandum of Appeal had allegedly not been served, and further made reference to Rule 79(1) and Rule 86(b) of the Court of Appeal Rules.
57. The above arguments are themselves legally misplaced in the present forum. The matter before this Court is an appeal and interlocutory application lodged before the Environment and Land Court in its appellate jurisdiction from a subordinate court, not an appeal before the Court of Appeal. The procedural regime applicable herein is therefore not the Court of Appeal Rules in the manner suggested by the Respondents. There is no requirement for a notice of appeal in an appeal lying to this court from a subordinate court.

58. The Court is alive to the fact that procedural rules are handmaidens of justice and are not to be ignored. Parties are under a duty to comply with court directions and procedural requirements. However, the legal consequences of non-compliance are not invariably automatic. Depending on the nature of the omission, the Court may strike out, excuse, extend time, regularize the process, or issue further directions. Such options underscore the discretionary character of the inquiry. A matter that calls for the Court's discretion, proportionality analysis, and appraisal of prejudice cannot be resolved through a preliminary objection.
59. In the premises I find and hold that the Notice of Preliminary Objection dated 5th February 2026 does not meet the threshold of a valid preliminary objection in law. It is hereby dismissed.
60. Having so found, the Court shall now proceed to determine the substantive merits of the Notice of Motion application dated 9th December 2025.

Whether the Notice of Motion application dated 9th December 2025 has merit to warrant the grant of the orders sought.

61. It is now well established that the grant of stay of execution is a discretionary remedy which must be exercised judicially and not capriciously at the whim of the Court.
62. Order 42 Rule 6(2) of the Civil Procedure Rules, 2010 donates the jurisdiction as follows:

"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."***

63. The Court of Appeal in **Mukuma v Abuoga [1988] KLR 645** reinforced the prerequisites that must be satisfied before a court can properly exercise its discretion to grant stay of execution, namely: 1) that the application has been brought without undue delay; 2) that substantial loss may result to the applicant if the order is not made; and 3) that such security as the court orders for the due performance of the decree has been given by the applicant.

64. In the case of **Butt v Rent Restriction Tribunal [1979] eKLR**, the Court of Appeal stated thus:

"It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. The court as a general rule ought to exercise its discretion in a way so as not to prevent the appeal, if successful, from being nugatory."

65. I will proceed to examine whether the Appellant/Applicant has satisfied the criteria for the grant of the orders sought.

66. The Respondents have strenuously urged this Court to find that the Appellant brought this application after inordinate and unexplained delay, pointing to the period of one hundred and forty-three (143) days between the delivery of the trial court's

judgment on 18th July 2025 and the filing of the present application on 9th December 2025.

67. The question of what constitutes unreasonable delay must always be assessed against the particular circumstances of each case. As was observed in **Jaber Mohsen Ali & Anor v Priscillah Boit & Anor, ELC Eldoret E&L No. 200 of 2012**, what is unreasonable delay is dependent on the surrounding circumstances of each case. This Court is therefore obligated to examine those circumstances carefully rather than to simply count the days that elapsed.

68. From the record, it is evident that the present application was filed more than three months after the delivery of the judgement. However, it is further apparent from the record that immediately upon filing the Memorandum of Appeal within the required timelines of 30 days required by Section 79G of the Civil Procedure Act, the Appellant concentrated more in writing to the Land Registrar, Ugenya, drawing attention to the pendency of the appeal, upon which a restriction was placed on the suit land. These steps, whilst not a formal application for stay of execution, demonstrate a consistent intention on the part of the Appellant to preserve the subject matter of the dispute pending the determination of the appeal. The Appellant was, in effect, attempting to achieve the same protective outcome as a formal stay order, albeit through informal channels.

69. But the gravamen of whether to grant the orders of stay is whether substantial loss would result to the Appellant if the

order for stay of execution is not granted. The dispute in the trial court concerned parcel LR No. EAST UGENYA/ANYIKO/18, which the Appellant avers constitutes his home and the residence of his children and grandchildren, including very young children.

70. It is a well-established principle of law and equity that land is unique and that an order for its transfer or possession, once executed, may give rise to consequences that are practically irreversible. As was observed in **Kenya Shell Ltd v Kibiru & Another [1986] KLR 410**, the court must be alive to the nature of the subject matter of the dispute in assessing whether substantial loss would result from the refusal of stay.

71. The Respondents have submitted that the Appellant has made only vague and generalized assertions of substantial loss. This Court respectfully disagrees with this position. The Appellant has deponed that the suit property is his home and execution of the trial court's orders would result in his dispossession from what he has known as his home. I think for me the prospect of being dispossessed of one's home and agricultural land is not a mere inconvenience. It is a loss which may be of irreplaceable kind which cannot be adequately compensated.

72. Furthermore, the Respondents have indicated their intention to proceed with the subdivision and registration of the suit land in their favour upon execution of the decree. If this occurs before the appeal is heard and determined, the suit land may pass into the hands of third parties through subsequent dealings, rendering the appeal entirely nugatory. The

substratum of the appeal would not be available for execution of the appellate court decree should the appeal succeed. No award of damages or costs could adequately compensate the Appellant for the defeat of his right of appeal in such circumstances.

73. This Court accordingly finds and holds that the Appellant has satisfied the second prerequisite. The prospect of physical dispossession from his home, the destruction of the substratum of the appeal through subdivision and re-registration of the suit land, and the irreversible nature of the consequences of execution collectively constitute substantial loss within the meaning of Order 42 Rule 6(2)(a) of the Civil Procedure Rules, 2010.

74. The third prerequisite under Order 42 Rule 6(2)(b) of the Civil Procedure Rules, 2010 requires that the Applicant furnish such security as the Court orders for the due performance of the decree or order as may ultimately be binding on him. The rationale for this requirement is to protect the interests of the decree holder and to ensure that the successful party is not indefinitely deprived of the fruits of the judgment without any safeguard in place.

75. The Respondents have submitted that the Appellant has offered no security whatsoever and that this failure is fatal to his application. This Court acknowledges that the Appellant has not, in his supporting affidavit, specifically proposed any form of security. However, the absence of a specific proposal for security does not, in and of itself, automatically defeat an application for stay of execution. Order 42 Rule 6(2)(b) vests in

this Court the discretion to determine what form of security is appropriate in the circumstances of each case. The Court is not confined to accepting or rejecting proposals made by the parties. It may impose such conditions as it deems just and expedient.

76. In the present case, this Court notes that the suit land itself, being the subject matter of the dispute, constitutes a natural and appropriate form of security. The Respondents have themselves, in both their Supplementary Replying Affidavit and their written submissions, proposed that the Appellant be ordered to deposit the title deed for parcel LR EAST UGENYA/ANYIKO/18 in court as security for the due performance of the decree. This Court finds that proposal to be reasonable and proportionate to the nature of the dispute.

77. Additionally, this Court is cognizant of the further submission by the Respondents that the Appellant has been cutting down trees on the suit land, thereby allegedly despoiling it. This Court takes a serious view of such conduct, if proven, and is of the considered view that appropriate conditions restraining the Appellant from committing waste upon the suit land ought to form part of any order granting stay of execution.

78. In totality, having carefully weighed the competing interests of the parties, the applicable law, and the peculiar circumstances of this case, this Court finds that the Notice of Motion application dated 9th December 2025 is meritorious and that the orders sought therein are deserving of being granted, subject to appropriate conditions designed to protect the interests of the Respondents as decree holders.

79. As to costs they shall abide the outcome of the appeal.

80. The upshot of the foregoing is that the Appellant/Applicant has made out a compelling case for the grant of orders of stay of execution pending the determination of the appeal.

81. The following orders issue to dispose of the preliminary objection and application dated 9/12/2025

- 1) THAT the Notice of Preliminary Objection dated 5th February 2026 is hereby dismissed with no orders as to costs.
- 2) THAT the Notice of Motion Application dated 9th December 2025 be and is hereby found to have merit and is allowed.
- 3) THAT a stay of execution of the orders issued by the trial court on 18th July 2024 be and is hereby granted pending the hearing and determination of this Appeal or until further orders of this Honourable Court.
- 4) THAT as a condition of the stay of execution hereby granted, the Appellant/Applicant shall, within fourteen (14) days of the date of this Ruling, deposit the original Certificate of Title for parcel LR No. EAST UGENYA/ANYIKO/18 in court as security for the due performance of the decree of the trial court.
- 5) THAT pending the hearing and determination of this Appeal, the Appellant/Applicant be and is hereby restrained from cutting down trees, subdividing, charging, transferring, alienating or otherwise despoiling parcel LR No. EAST UGENYA/ANYIKO/18.
- 6) THAT costs of this application shall abide the outcome of the Appeal.

DATED at SIAYA this 27th Day of April 2026

HON. JUSTICE A. E. DENA

JUDGE

27/4/2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

Mr. Odera for the applicant

Alex Onyango Nyawaga 1st Respondent

No appearance for 2nd Respondent.

Court assistant: Dorothy Awuor