



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC EPJR E001 OF 2023

BETWEEN

REPUBLIC APPLICANT

= VERSUS =

**BUSIA COUNTY LAND REGISTRAR
RESPONDENT**

EX-PARTE APPLICANT HENDRIKA ATYANG EMURUDU

= AND =

**EMMANUEL EKAMURAN MONGOR
RESPONDENT**

= AND =

**WILDAD BARASA EMOMERI 1ST INTERESTED PARTY
OKIBOKO NYAMORI 2ND INTERESTED PARTY & 20
OTHERS**

RULING

1. Vide a notice of motion dated 28th November 2025 the 1st interested party (applicant) seeks an order of stay of execution of the ruling and an order for payment of costs made by this court on 27th November 2025 pending the hearing and determination of an appeal filed in respect thereof.

2. The application is premised on the grounds on its face and supported by the affidavit of the applicant sworn in support thereof in which the grounds on the face of the application are reiterated.

3. As can be discerned from the grounds taken up in support of the application, the applicant is dissatisfied with the decision of this court allowing the respondent to execute the order for costs against him yet judgment pursuant to which the order for costs was made found several other parties to the suit liable for paying the costs of the suit. Based on the judgment of the court, on which the order for costs is premised, the applicant contends that execution of the decree for costs should not be levied solely upon him but ought to be distributed among the various parties to the suit found to be liable to payments of the costs. Towards that end, the applicant intimates' willingness to pay his share of the costs of the suit being Kshs.10,000/-.

4. It is the applicant's case that execution of the order for costs solely against him is prejudicial to him as owing to financial incapacity to raise the entire amount, being Kshs.88, 470/-, he risks being arrested and put in civil jail yet it has not been demonstrated that the other parties found liable to pay costs are unable to pay their share of the costs.
5. In reply and opposition to the application, the respondent filed grounds of opposition dated 20th February 2026 in which he contends that the application is frivolous, vexatious, misconceived, bereft of merit, incompetent, fatally defective and an abuse of the court process.
6. The applicant filed submissions dated 11th February 2026 in which he reiterates the grounds taken up in support of the application and submits that he has met the conditions for being granted stay pending appeal.

7. In their submissions dated 16th February 2026, the respondents have submitted that there is no valid appeal on which the application for stay can hinge; that the order purportedly appealed from does not attract an appeal as of right and that the appeal is a non-starter as no leave to appeal was sought and/or issued.

8. The respondent further submits that an order of stay of execution pending appeal cannot be granted in respect of costs as they can always be refunded. In that regard, reference is made to **Nairobi Civil Application No.298 of 1996 (113/96 UR)-Francis Kabaa vs. Jane Wanjiru** where the Court of Appeal held/stated: -

“...We do not think that stay can be granted in respect of costs...”

9. The respondent further submits that the respondent has not demonstrated that unless stay is granted, he stands to suffer substantial loss. The respondents point out that in his supporting affidavit and submissions, the applicant has not

alleged that the respondents will not be able to refund the sum of Kshs.88,470/- in case the appeal succeeds.

10. Based on the decision in **Nairobi HCC No. 122 of 2008- Dalbit Petroleum Ltd vs. Victory Construction Ltd**, the respondent submits that substantial loss, in an order/decreed for payment of money, means that if the money is paid out, the applicant will be unable to repay should the appeal succeed and reiterates his contention that the applicant has not made up a case for being granted an order of stay pending appeal.
11. I have read and considered the grounds taken up in support of the application, the opposition thereto and the submissions by the parties.
12. I find the sole issue for determination is whether the applicant has made up a case for being granted the orders sought or any of them. Concerning that issue, I have considered the applicant's application as it relates to the order of stay of the decree/order for payment of costs

pending the hearing and determination of the intended appeal.

13. In the instant application, the applicant has neither alleged that the respondent is unable to refund the decree sum nor demonstrated that the respondent is not capable of refunding the amount ordered to be paid, in case he succeeds in his appeal. The reasons given being inability to pay or the risk of been arrested and put in civil jail are issues to be considered by the court executing the decree and not grounds or reasons on which the application for stay pending appeal can hinge.
14. Guided by the decision of the Court of Appeal cited by the respondent to the effect that an order for stay cannot be granted in respect of costs and persuaded by the decisions cited in **Nairobi HCC No. 122 of 2008-Dalbit Petroleum Ltd vs. Victory Construction Ltd**, I find and hold that the applicant has not discharged the burden placed on him of

proving that unless stay is granted, he may suffer substantial loss.

15. Other than Prayer 2 of the notice of motion dated 28th November 2025 which was allowed on 1st December 2025 by Olao J, I find the motion to be lacking in merits and I dismiss it with costs to the respondents.
16. Orders accordingly.

**Ruling dated, signed and delivered virtually at Busia this
30th day of April, 2026**

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Omondi for the *exparte* applicant/ respondent

N/A for the 1st Interested Parties

N/A for the 1st and 2nd Respondents

Court Assistant; Tracy

ORIGINAL