

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA
ELC LAND APPEAL NO. E039 OF 2024

SIMON SIMIYU WEKESA.....1ST

APPELLANT

ENOS WEKESA.....2ND

APPELLANT

VERSUS

**FRIDA NAMAEMBA MILIMO (Sued as the
Administrator of the Estate of ANDREW MILIMO
MUFUTU).....RESPONDENT**

RULING

This ruling is in respect of two applications. Through the application dated 9/12/2025, the Appellants seek stay of execution of this court's judgment, vide which it confirmed the decision of the Magistrates' Court pending hearing and determination of the intended appeal. The application was made on the grounds that the Appellants had filed a Notice of Appeal and that stay was necessary to preserve the suit property pending appeal, for otherwise it may be rendered nugatory.

Simon Simiyu Wekesa swore the supporting affidavit and deponed that the Respondents were intent on evicting them from the land known as E. Bukusu/S. Kanduyi/4473, which has been their home for over 40 years. The second application

dated 6/2/2026 sought to have this court revisit the application dated 9/12/2025, certify it urgent and issue interim orders pending *inter partes* hearing. The affidavit in support of this application was similarly sworn by Simon Simiyu Wekesa.

The Respondent deponed in the Replying affidavit sworn on 16/3/2026 that the myriad applications for stay were an abuse of the court process and that nothing new had been placed before the court to warrant any urgency.

The application was canvassed through written submissions. The Appellants submitted that they filed the notice of appeal on the same day that judgment was delivered and that they brought this application five days after the delivery of the judgment.

The Appellants urged the court to preserve subject matter of the litigation and give parties an opportunity to exhaust due process. Their case was that they had extensively developed the suit land and stood to suffer substantial loss unless stay of execution was granted.

On security, the Appellants offered the premises on the suit property as security and argued that the premises need not be demolished. The Appellants submitted that the application dated 6/2/2026 was brought to persuade this court to fast track the application for stay dated 9/12/2025.

The issue for determination is whether the Appellants have demonstrated that they deserve orders of stay of execution of the judgment of this court pending hearing and determination of the appeal to the Court of Appeal.

The factors which the court needs to consider in determining the application for stay are whether substantial loss may result to the applicants unless stay is granted; if the application has been made without unreasonable delay; and lastly, whether the applicants have furnished security for the due performance of the decree that may ultimately be binding on them.

The application for stay was filed timeously. The Appellants urged that substantial loss would result to them unless stay is granted because the buildings which 1st Appellant had over the years extensively developed on the suit property could be demolished. On security, the Appellants have offered the developments on the suit land as security for the due performance of whatever decree may ultimately be binding on them.

The court is satisfied that the Appellants have met the requirements for grant of stay. The Appellants are granted six months stay of execution pending filing an application for stay of execution before the Court of Appeal. Each party will bear its costs of the application.

Delivered virtually at Bungoma this 29th day of April 2026.

**K. BOR
JUDGE**

In the Presence of:-

Mr. Simon Simiyu Wekesa- the 1st Appellant

Mr. R. Wamalwa holding brief for Mr. W. Simiyu for the
Respondent
Court Assistants -Josephat Bett/ Metrine

ORIGINAL FILE COPY