



REPUBLIC OF KENYA



**Lukio v Lebanguti & another (Land Case Appeal E002 of 2026)  
[2026] KEELC 2630 (KLR) (Environment and Land) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2630 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
LAND CASE APPEAL E002 OF 2026**

**EK WABWOTO, J**

**MAY 6, 2026**

**BETWEEN**

**PETRO SIMON LUKIO ..... APPELLANT**

**AND**

**ALPHONCE MEJA LEBANGUTI ..... 1<sup>ST</sup> APPLICANT**

**PETER LEBANGUTI MELEWENI ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. This ruling is in respect to the Respondents' Notice of Motion dated 12th February 2026 brought pursuant to Order 42 Rule 14, Order 26 Rules 1, 4 and 5 of the Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21). The Applicants seek orders compelling the Appellant to deposit security for their costs in the appeal and, in default, dismissal of the appeal.
2. The application is supported by the joint Supporting Affidavit of Alphonce Meja Lebanguti and Peter Lebanguti Melewuni, both deponents, sworn on or about 12th February 2026 and filed the same day. In the affidavit, the Applicants state that the trial court delivered judgment on 15th January 2026 in their favour against the Appellant. They further depose that the Appellant has maliciously instituted this appeal with the sole intention of impeding their enjoyment of the fruits of the judgment.
3. The Applicants assert that the Appellant has no known movable or immovable assets situate in Kenya. They express apprehension that they will be unable to recover the costs of defending what they describe as a frivolous and misconceived appeal that has no prospects of success. According to them, they are likely to suffer loss if the appeal proceeds without security being furnished. They conclude that the Appellant will suffer no prejudice if the orders sought are granted.



4. The Applicants filed written submissions undated but filed after the Replying Affidavit of 20th February 2026. In those submissions, they maintain that their application is meritorious, that the Appellant has not filed any title deeds or other proof of assets, and that the appeal ought to be dismissed with costs in the event of non-compliance with any security order.
5. The Appellant opposed the application by way of a Replying Affidavit sworn by Petro Simon Lukio on 20th February 2026 and filed the same day.
6. In the Replying Affidavit, the Appellant strongly opposes the application. He describes it as frivolous, vexatious, defective, misconceived, bad in law, lacking in merit, and an abuse of court process made in bad faith with fabricated averments. He contends that the application is intended to waste court time and delay justice. He further accuses the Applicants of coming to court with unclean hands.
7. The Appellant maintains that his appeal is meritorious and that the nature of the orders sought does not warrant him to put up any security pending the hearing and determination of the appeal.
8. On the contrary, he argues that he ought to be granted stay of execution of the trial court judgment pending determination of his appeal. He emphasizes that the application has no merit because it seeks orders on an un-liquidated appeal in which no monetary award was made to the Respondents in the lower court judgment.
9. He describes the application as an afterthought that would cause him irreparable loss and damage if granted. He therefore urges the court to dismiss the application with costs.
10. The Appellant also filed written submissions dated 17<sup>th</sup> February 2026. In those submissions, he reiterates the points raised in his Replying Affidavit, submits that the Applicants failed to file a decree or certificate of costs, accuses them of lying about his assets, quotes Order 42 Rule 6 CPR on stay of execution, and prays that the application be dismissed with costs.
11. I have considered the Application, the response and written submissions made by parties. The issue which in my opinion arise for determination is whether or not the Respondents/Applicants have made out a case to warrant the court to direct the Appellant to provide security for the costs pending the hearing and disposal of the Appeal.
12. Under Order 42, rule 14 of the Civil Procedure Rules, after a memorandum of appeal has been served, the court in its discretion, may order the appellant to provide security for the whole or part of the costs of the appeal. If the appellant is not ordinarily resident in Kenya and lacks sufficient property in Kenya apart from property related to the appeal, the court may order security be given for all or part of the costs. Failure to provide the ordered security within the time specified can lead to the appeal being dismissed.
13. It is also worth noting that mere inability is however not enough, the Court must satisfy itself that it will be just to make the order for costs on the facts and circumstances of the case. Other factors that the Court would consider are the residence of the party whom the order is sought against as well as the conduct of the parties.
14. In *Gatirau Peter Munya v Dickson Mwenda Githinji & 2 Others*, CA No. 38 of 2013 [2014] eKLR, the Supreme Court emphasized that:

“In an application for further security for costs, the Applicant ought to establish that the Respondent, if unsuccessful in the proceedings, would be unable to pay costs due to poverty. It is not enough to allege that a Respondent will be unable to pay costs in the event that he is



unsuccessful. And the onus is on the Applicant to prove such inability or lack of good faith that would make an order for security reasonable.”

15. Equally in the Supreme Court case of *Westmont Holdings SDN BHD v Central Bank of Kenya & 2 Others* (Petition 16 (E023) of 2021) [2023] KESC 11 (KLR), The Supreme Court held that while the law permits security for costs and appellate courts have jurisdiction to make such orders under Order 42, rule 14 of the Civil Procedure Rules and Rule 107 of the Court of Appeal Rules, the exercise of that discretion must not stifle access to justice.
16. In the present case, the Respondents have alleged that the Appellant does not have any known property in Kenya, and that in the event that he is successful his appeal, he will experience difficulties in recovering costs that may be awarded.
17. The Court must exercise this power judicially and particularly to ensure that it meets the end of justice as opposed to assisting a party act in the abuse of the Court process.
18. In the case of *Peter Munya* (supra) and *Westmond Holdings* (Supra), the Apex Court emphasized that in an application for further security for costs, the Applicants ought to establish that the Respondent, if unsuccessful in the proceedings, would be unable to pay costs due to poverty. It is not enough to merely allege without sufficient evidence that a Respondent will be unable to pay costs in the event that he is unsuccessful. The onus is on the Applicant to prove such inability or lack of good faith that would make an order for security reasonable.
19. When faced with such an application, the court should also balance the competing interest between the parties to ensure that the order for security for costs does not impede on the right to access to justice as enshrined under *the Constitution*.
20. Article 48 of *the Constitution* guarantees the right of access to justice while Article 159(1) of *the Constitution* requires the Court in exercising judicial authority to be guided with the principle that justice shall be done to all irrespective of their status. The Appellant/Respondent argued that the current application has no merit, is full of falsehood and the nature of the orders sought cannot be granted.
21. In considering whether or not to grant the application and in line with the principles set out in the authorities cited herein, I have perused the supporting affidavit sworn by the Applicants on 12<sup>th</sup> February 2026 and noted that they did not furnish this court with any cogent evidence to support their claim that the Appellant/Respondent is financially unstable so as to justify his averments that he will experience difficulties in recovering costs from the Appellant/Respondent should they be successful in the Appeal.
22. In other words, no material was placed before this court to show that the Appellant is in dire straits such that he will be unable to meet their financial obligations for costs should he lose the case. Further it is also worth noting that the costs awarded by the trial court have not been assessed and hence are not recoverable as at this stage.
23. Ordering security in these circumstances would offend the principles in *Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others* (supra) as well as the overriding objective and the constitutional right of access to justice.
24. In view of the foregoing, I am unable to uphold the Respondents’/Applicants argument in support of their application. Consequently, the Application dated 12<sup>th</sup> February 2026 is dismissed in its entirety. Each party to bear own costs.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 6<sup>TH</sup> DAY OF MAY 2026.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Peter Simon Lukio the Appellant in person.

Aplhonce Meja Lebanguti &

Peter Lebanguti Meleweni the Respondents in person.

Court Assistant; Mary Ngoira and David Ngoosa.

