

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**

**ELCLA NO. E036 OF 2025**

**PAUL**

**NJOROGE**

**MUHOHO.....APPELLANT/APPLICANT**

**-VERSUS-**

**JOHNSON**

**WANGAI**

**GITAH.....**

**.....RESPONDENT**

**RULING**

**1.** Before me is a notice of motion application dated 22.10.2025 where the appellant is seeking an order for stay of execution of the judgment delivered on 29.9.2025 (it was actually delivered on 30.9.2025) in Nyahururu CM ELC No. E040 OF 2024. The applicant is aggrieved by the said judgment whereby the respondent was ordered to make a refund of Ksh.80 000 as the land sale agreements were not enforceable. Thus, the respondent has attempted to execute the judgment by way of making the refund, and he may be evicted any time. He avers that he has constructed temporary structures thereon and he has been farming on the said land for the last 16 years.

2. In opposition thereof, the respondent filed a replying affidavit dated 7.1.2026 where he contends that save from the random food crops like maize and beans which the appellant has since harvested, the appellant has not done anything substantial on the suit land.
3. I have considered the rival arguments and submissions. The applicant contends that he has been in occupation of the suit land for the last 16 years, thus he stands to suffer substantial and irreparable loss.
4. In the case of **Wellington Lusweti Baraza & 47 others v Lands Limited & another [2015] eKLR** a decision which was upheld at the Court of Appeal, it was stated as follows on the question of substantial loss;  
  
**“Other than cultivating on the land the Judgment debtors have not shown any substantial loss they are likely to suffer. I do find that living on the land and cultivating food crops is not sufficient reason for the grant of stay pending appeal.”**
5. Similarly, in the case at hand, it is not enough for the applicant to state that he has been cultivating the land for

16 years. It is not lost to this court that the identity of the suit land is still unknown as its title is still unavailable.

6. In the end, I find that the application dated 22.10.2025 is not merited, the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 5<sup>th</sup> DAY OF MAY 2026 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

**Bedan - Court Assistant**

**Wahome for the Appellant**

**Bongi for the Respondent**