



**Theuri v Theuri (Environment and Land Appeal E034 of 2025)
[2026] KEELC 2707 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2707 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL E034 OF 2025**

LN MBUGUA, J

MAY 5, 2026

BETWEEN

MARY WAIRIMU THEURI APPELLANT

AND

ANN WANJIKU THEURI RESPONDENT

RULING

1. Before me is a notice of motion application dated 13.10.2025 where the appellant is seeking orders of stay of execution of the judgment delivered on 1.10.2025 in Nyahururu CM ELC E044 OF 2021 as well as an injunction restraining the respondent from interfering with the suit parcel L.R. Laikipia/Marmanet/630-632.
2. The application is premised on grounds that the applicant has been on the suit land since year 2010 and that is where she has put up her matrimonial home. She avers that the net effect of the judgment is her eviction from the suit land.
3. In opposition thereof, the respondent filed a replying affidavit dated 28.11.2025 averring that she has no intention of demolishing the houses on the suit land or selling the land, adding that all that the applicant has are her clothes and household goods. The respondent filed a further affidavit dated 28.1.2026 averring that the applicant vacated the suit premises on 24.12.2025 and in the process of vacating, she sold her water tank and that the land is now occupied by one Esther Ngugi who avers that she has leased the land from the respondent for 3 years.
4. The applicant has in turn filed a supplementary affidavit dated 6.2.2026 where she avers that contrary to the allegations made by the respondent, she has not vacated the suit land and she is still in exclusive possession of the same.



5. I have considered the rival arguments and submissions. To grant or not to grant the orders of stay of execution and injunction are the issues for determination. Order 42, Rule 6 of the Civil Procedure Rules provides that:

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order,.....”

6. In the case of *Samvir Trustee Limited vs. Guardian Bank Limited Nairobi* [2007] eKLR, Warsame J (as he then was) stated thus;

“... It is my humble view that for the applicant to obtain a stay of execution, it must satisfy this court that substantial loss would result if no stay is granted...”

7. The applicant contends that the suit land is her matrimonial home, and that she is in exclusive possession of the suit property. However, a rather specific allegation has been made by the respondent that the applicant moved out on 24.12.2025 and brought in a neighbour who has leased the land for 3 years, of which a complaint was made to the chief and the report thereof has been availed by the respondent. In her supplementary affidavit, the applicant has not adequately responded to the above allegations, she does not even mention Esther Ngugi. This far, I find that the application dated 13.10.2025 is not merited, the same is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 5th DAY OF MAY 2026 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Bedan – Court Assistant

M/s Rotich holding brief for Nderitu Komu for the Appellant

Gakenia Gacheru holding brief for Waichungo Martin for the Respondent

