



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCLA E002 OF 2026**

**KENNETH GITHINJI GITURA .....APPELLANT/APPLICANT**  
**VERSUS**  
**LAWRENCE KARIUKI .....RESPONDENT**

***(Being an appeal from the Judgment of the Learned Senior Resident Magistrate, Hon. Dr. Sheila Nyaga on 5<sup>th</sup> December, 2025 in MCELC No. E002 of 2022 at Kandara Law Courts.)***

## **RULING**

(1) This ruling is on the notice of motion dated 20-1-2026. The motion which is brought under **Order 42 rule 6(1) and (2), Order 51 rule 1 of Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act, Article 159 (2) (d) of the Constitution of Kenya** and all enabling provisions of the law seeks the following residual orders.

**3. Stay of execution of the judgment in Kenol MELC Case No. E007/2022 which is dated 5-12-2025 and all consequential orders, pending the hearing and determination of this appeal.**

**4. That the costs of this Applicant to be provided for.**

(2) The motion is based on six grounds and it is supported by the affidavit of the Applicant dated 20-1-2026. The gist of the grounds and the supporting affidavit is as follows. One, the Appellant is dissatisfied with the judgment dated 5-12-2025 hence this appeal. He has applied for and has been supplied with the proceedings and judgment to facilitated in his preparation for the appeal. Two, the Respondent may execute the decree before the hearing of the appeal and the Appellant stands to suffer irreparable loss and damage. This is the reason why he had filed this motion and the appeal raises triable issues.

(3) The motion is opposed by the Respondent whose counsel has sworn a replying affidavit dated

12-3-2025 in which he replies as follows. Firstly, the appeal does not raise triable issues and in the trial, no evidenced of a surveyor was called by either party. Secondly, the Appellant was not able to prove the root of the title to prove ownership of the suit land. Thirdly, the Appellant has not proved substantial loss in case this application is not allowed. Finally, the Applicant has not explained the delay of almost two months from the date of the judgment of the lower court and the date of filing of the current motion.

(4)I have carefully considered the motion in its entirety including the grounds, the two affidavits by both parties and the available record. This being an application for stay of execution pending appeal, **Order 42 rule 6 of the Civil Procedure Rules** kicks in.

For an Applicant to be allowed a stay of execution, he must prove three things.

**(a) Substantial loss,**

**(b) Expeditious filing of the motion and**

**(c) Offer security for the due performance of the decree that may be binding on him.**

The issues that arise in this motion are as follows.

**(i) Whether the Applicant has proved that he stands to suffer substantial loss.**

**(ii) Whether any security for the due performance of any decree that may be found binding on the Applicant has been provided.**

**(iii) Whether the Applicant has been filed without inordinate delay.**

(5)On the first issue, I find that the Applicant has not been convincing on the nature of the loss that he stands to suffer. He has not filed any evidence of what he has on the land. I have not seen even a single photograph of a house on the suit land. It is only in the judgment at paragraph 5 where I have seen that the Applicant may have built a permanent house on the suit land in defiance of the County and National Governments orders. It is only because of this reason that I will find that the Applicant will suffer substantial loss.

(6)As for the second issue, I find that other than the costs of the suit, the Respondent has nothing to lose because in the event the appeal is dismissed, the land will be available to the successful party.

(7) Finally, I can see that the appeal was filed without unreasonable delay because the judgment was on 5-12-2025 and the appeal was filed on 13-1-2026. Since under **Order 50 rule 4** of the **Civil Procedure Rules** time does not run from December 21<sup>st</sup> to January 13<sup>th</sup>, then the appeal and the current application were filed within time.

(8) For the above stated reasons and in order to preserve the subject matter of the appeal, I **allow** the notice of motion dated 20-1-2026 in terms of **prayer 3**. Costs in the cause. Appeal to be heard and determined before 13-1-2027.

**It is so ordered.**

**Dated, Signed and Delivered virtually at Murang'a this 12<sup>th</sup> day of May, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of: -**  
**Court Assistant – Antony**  
**Appellant's Counsel – Mr Karuga Wandai**  
**Respondent's Counsel – Mr Githinji**