



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
FAMILY APPEAL NO. E 003 OF 2026

RUKIA CHARFANA
GUYOAPPELLANT

VERSUS

ABDI NYABURA
GUYORESPONDENT

RULING

1. The Appellant's Notice of Motion dated 23/01/2026 seeks orders as follows:
 - a. *(Spent)*
 - b. *(Spent)*
 - c. *That the Honourable Court be pleased to order stay of further proceedings of the Kadhi's Court matter in Matrimonial Cause No. E014 of 2024 pending the hearing and the determination of the Appeal before this Court.*
 - d. *That the Honourable Court be pleased to order stay of execution of the two interim orders and any subsequent decree of the honourable Principal Kadhi Hon. Gavava Awadh Mohammed delivered on 8th January 2026, pending hearing and determination of the Appeal before this Court.*

- e. *The Honourable Court be pleased to order the Respondent to provide maintenance for the minors including payment of school fees, Madrasa fees and any medical expenses as maybe required pending hearing and determination of the Appeal before this Court.*
- f. *Any other relief that the Honourable Court deems fit to grant.*
- g. *The costs of this Application be provided for*

The Applicant's Case.

- 2. It is the Applicant's case that on 8th January 2026, the trial Kadhi issued two interim orders, without giving a chance to the Applicants to be heard; that the two orders were issued yet the trial court had already given directions that the two Applications will proceed by way of Written Submissions. It is stated that the trial Kadhi, therefore proceeded to determine the Applications prematurely.
- 3. The Applicant further states that that the interim orders were made in the afternoon of the same day after the directions on the hearing had been given in the morning; that, through the said interim orders, the trial Court reviewed the existing orders on maintenance of the children, to their detriment. It is also stated that the trial Court further issued final orders in respect to the ownership of a plot under dispute, when he had no jurisdiction to issue such an order.

The Respondent's Case

- 4. The Respondent opposes the Application through the Replying Affidavit sworn on 29th January, 2026. He states that the orders by the Hon. Kadhi were

justified in view of the Applicant's failure to comply with earlier orders directing parties to undertake paternity test; that, the orders on the plot were necessary to preserve the property pending the DNA test. It is further stated that in any event, earlier on, on the 8th January, 2026, the Hon. Kadhi had indicated that he would give directions on same day at 2:00p.m or publish them on the case tracking system (CTS). That counsel for the Applicant failed to log in at 2:00pm as directed. It is argued that since the subject Application was taken to Court under *Certificate of Urgency*, it was appropriate that interim order be issued.

Applicant's Submission

5. It is the Applicant's submission that she was condemned unheard contrary to Articles 25 and Article 50 of the Constitution; That the right to be heard is unlimited. In this regard, the Applicant has relied on the Supreme Court decision in the case of ***Evans Odhiambo Kidero & 4 Others vs Ferdinand Waititu & 4 Others.***
6. She points out that the Hon. Kadhi gave directions on the hearing of the Application then later on, went behind her back to give further orders. She further points out that the Respondent who was the Applicant in the Application, was yet to file Submissions on the Application , giving rise to the impugned order.
7. The Applicant further submits that the orders of stay are warranted, and that she has met the prerequisite conditions under ***Order 42 Rule 6 of the Civil procedure Rules.***

Respondent's Submissions

8. The Respondent reiterates that the issuance of the interim orders in respect of the Application dated 24/12/2025 was mandatory (sic), as the Application had been taken to Court under *Certificate of Urgency* ; that the trial Court reserves the discretion to issue interim orders at any stage of the suit, and that in any event, the orders issued were not final. It is submitted that the Applicant's contention that she was condemned unheard is therefore not true. It is the Respondent's final submission that substantial loss had not been demonstrated.

Determination

9. The principles governing stay pending Appeal are founded on **Order 42(6)2 of the Civil Procedure Rules**, and the principles are:-The Applicant must demonstrate substantial loss unless stay is granted; the Application must be brought without undue delay, and Such security as is sufficient to satisfy the decree in the event that the Appeal fails must be availed. It is also trite law that the Applicant must demonstrate that there is an arguable Appeal with high chances of success.
10. On substantial loss, the Applicant has argued that the nature of the order granted has serious implication on the Applicant's son's right to property, which right enjoys Constitutional protection. In view of the above I disagree with the Respondent in his Submissions that substantial loss has not been demonstrated. Whether the submission is plausible or not , is a different matter .
11. Further the court has observed that one of the orders issued by Hon. Kadhi on 8/01/2026, was for

for cancellation or revocation of any registration or transfer of Plot “B” at Isiolo from **Abdi Nyabure** to **Maslan Abdi Nyabure**. The above order was not only substantive but final as that was what the respondent herein had sought for under prayer (iv) of the Notice of Motion dated 24/12/2025 . I am satisfied that loss of an immovable property like land constitutes substantial loss.

12. The Lower Court ruling was delivered on 28/01/26, while the present Application was filed on 23/01/26. There was therefore no delay in filing the Application.

13. On the provision of security ,its placement is not necessary or appropriate in all circumstances. Each case must be looked at based on its circumstances. The orders sought to be stayed is transfer of interest in land. It is a non- monetary order . The other is to stay an order which has stopped the maintenance of children. Security pending appeal is not practicable in such a case . However in the event that paternity test turned out negative , there are a appropriate remedies available to the respondent

14. The last issue is on whether the Applicant has an arguable Appeal. I have looked at the Memorandum of Appeal. The Appellant has raised two key issues, namely; the jurisdiction of the Kadhi’s Court to determine the issues of Title to land or interest in land , and the right to be heard. The two issues are constitutional, and substantive in nature, and are therefore arguable. I will not say any more on this issue lest I prejudice the Appeal.

15. In the end , I am satisfied that the orders of stay both on execution and stay of proceedings are warranted. In arriving at this conclusion I have further relied on the decision of the court in the Case of ***Butt vs Rent Restrictions Tribunal [1982] KLR 417*** cited by the Applicant in which the Court held “ *courts have the discretion to grant a stay of execution to ensure an appeal is not rendered nugatory, particularly if the appellate court might reverse the initial decision.....*” The court went further to emphasize that a stay should not be refused simply because a different remedy might exist later.

16. Finally, an issue touching on the paternity of the children has been raised. The respondent has informed the court that despite an order for a DNA test by the trial court, there has been non-compliance by the Applicant. Primarily, parental responsibility is tied to the fact of being a parent to the child and is a preliminary issue in a parental responsibility dispute. The moment it is raised, then it must be resolved quickly as it determines the direction of the dispute on the question of parental responsibility.

17. The Applicant has not responded to the respondent’s allegation on her refusal to cooperate. It will not be fair to the respondent to drag him through these proceedings when he has expressed apprehension about the paternity of the children. The Applicant must comply and do so expeditiously.

18. Final orders:

- a) Pending the hearing and determination of the Appeal herein, there shall be a stay of further proceedings in Isiolo Kadhi's Matrimonial Cause No. E014 of 2024.
- b) Pending the hearing and determination of the Appeal herein, there shall be a stay of the two interim orders both dated 8/01/2026, in Isiolo Kadhi's Court Matrimonial Cause No. E014 of 2024.
- c) For avoidance of doubt the Respondent shall continue to meet the cost of maintenance and pay school fees, Madrasa fee and medical expenses for the minor pending Appeal or until any further orders of this court.
- d) Both the Appellant, the Respondent and the children to avail themselves for DNA test at **Garba Lancet Meru** as per the orders of the trial Court made on 26/11/2025 not later than 14 days from the date of this Ruling. The Appellant to avail the children.
- e) This matter shall be mentioned on a date to be given during the delivery of this Ruling for purposes of confirming compliance with order (d) above.
- f) Each party to meet their own cost.

Dated, Signed and delivered at Isiolo, this 7th day of May, 2026

S. Chirchir
Judge

In the presence of:-
Roba Katelo-Court Assistant.
Mr. Abdullahi for the Applicant
Ms. Chisenga for the Respondent

ORIGINAL