

**REPUBLIC OF KENYA**

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

**ELCLA/E054/2025**

**MONICA WAMBUI NDUNGU (Legal Representative**

**of the Estate of JAMES NDUNGU MBURU  
(Deceased)).....APPELLANT**

**VERSUS**

**MATUNTA OLE NTEE (Legal Representative of**

**the Estate of NTII OLE NKAKA (Deceased)).....1ST**

**RESPONDENT**

**SAITORE OLE NTII (Legal Representative of**

**the Estate of NTII OLE NKAKA (Deceased)).....2ND RESPONDENT**

**AND**

**MONICA WAITHIRA (Legal Representative**

**of the Estate of ELIJAH KUNGU WAITHIGU (Deceased)).....1ST INTERESTED**

**PARTY**

**SIMON NGIGI KIBIA.....2ND INTERESTED PARTY**

**DANIEL KAMAU KIBIA .....3RD INTERESTED PARTY**

**REGISTRAR OF LANDS, KAJIADO.....4TH INTERESTED PARTY**

**(Being an appeal from three Rulings of Magistrate Court, Loitoktok Law Courts delivered on 6th August 2025 by Honourable Esther K. Kimilu SPM at Loitoktok Magistrate Court on Environment and Land Court Case No. E001 of 2024 involving Matunta Ole Ntee (1st Plaintiff), Saitore Ole Ntii (2nd Plaintiff) –versus- Monica Wambui Ndungu (1st Defendant), Monica Waithira (2nd Defendant), Simon Ngigi Kibia (3rd Defendant), Daniel Kamau Kibia (4th Defendant) and Registrar of Lands, Kajiado (5th Defendant)**

### **RULING**

#### **Introduction**

1. Coming up for determination before this Honourable Court is the Notice of Motion Application dated 25th November 2025, brought by the Appellant/Applicant, Monica Wambui Ndungu, suing as the Legal Representative of the Estate of James Ndungu Mburu (Deceased). The Application is expressed to be brought under Sections 1A, 1B, 3A, and 63(e) of the Civil Procedure Act, Order 42 Rule 6 and Order 51 of the Civil Procedure Rules, and Article 159 of the Constitution of Kenya 2010.
2. Through the instant Application, the Appellant/Applicant primarily seeks an order for a stay of execution of the judgment delivered on 11th March 2025, and the resultant decree issued on 6th November 2025, along with all consequential orders made in Loitoktok MCELCL/E001/2024. The order of stay of execution is sought pending the hearing and

determination of this application, and ultimately, pending the hearing and determination of the appeal filed on 5th September 2025 via a Memorandum of Appeal dated 4th September 2025.

3. The Application is supported by the grounds set out on the face of the motion and the annexed Supporting Affidavit of Monica Wambui Ndungu. The crux of the Appellant/Applicant's case is that the trial court's judgment of 11th March 2025 discloses a manifest error on the record by invalidating sub-titles Loitoktok/Kimana Tikondo/745 and 784, while preserving sub-titles Loitoktok/Kimana Tikondo/746 and 783, all of which were carved from the same parent title, Loitoktok/Kimana Tikondo/765. Furthermore, the Appellant/Applicant avers that the intended appeal is arguable, and that unless a stay is granted, she stands to be dispossessed of her property rights as the Respondents have already extracted a decree and are poised to execute it, which would render the intended appeal nugatory.
4. The Application is opposed by the 1st and 2nd Respondents, Matunta Ole Ntee and Saitore Ole Ntii, who are sued as the Legal Representatives of the Estate of Ntii Ole Nkaka (Deceased). Their opposition is premised on the Replying Affidavit sworn jointly by the 1st and 2nd Respondents.
5. The Respondents contend that the Appellant's intended appeal is incompetent on the face of the record, as it seeks to conflate and appeal against three separate rulings in a single application and memorandum of appeal. They assert that the appeal is, in fact, directed at the main judgment of 11th March 2025, but was filed outside the statutory timeframe without leave of the court being sought or granted.

6. On the merits of the property dispute, the Respondents maintain that the trial court correctly restricted its judgment to the pleaded titles (Loitoktok/Kimana Tikondo/745 and 784), as titles 746 and 783 were unpleaded properties with no nexus to the suit. Consequently, the Respondents urge the Court to dismiss the Application, characterizing it as a dilatory tactic aimed at frustrating the execution of a valid judgment and decree.
7. It is against this backdrop of competing assertions and factual contestations that the Court is called upon to determine the merits of the Notice of Motion Application dated 25th November 2025.

**Directions by the court**

8. The application was canvassed by way of written submissions as directed by the court, the submissions of which have been duly considered in the writing of this ruling.

**Issues for determination**

9. The singular, determinative issue before this Court is whether the Appellant/Applicant has satisfied the requisite threshold for the grant of an order for stay of execution of the judgment delivered on 11th March 2025, and the resulting decree, pending the hearing and determination of the intended appeal. This requires an assessment of whether the conditions set out under Order 42 Rule 6 of the Civil Procedure Rules have been met.

**Analysis and Determination**

10. The jurisdiction of this Court to grant a stay of execution pending appeal is discretionary but must be exercised within the strict confines of the law. The guiding principles are encapsulated in Order 42 Rule 6(2) of the Civil Procedure Rules, which explicitly provides that no order for stay of execution shall be made unless, "the court is satisfied

that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant". Both parties agree that these three limbs: substantial loss, promptitude, and security, form the cornerstone of the Court's analysis.

11. The Appellant/Applicant anchors her case on the premise that execution of the decree will lead to the cancellation of registered titles, thereby extinguishing her proprietary rights irreversibly. She frames the risk eloquently: "Should execution be permitted to irreversibly extinguish registered proprietary rights before the appellate court has spoken?".
12. Relying on the Court of Appeal's pronouncement in **Kenya Shell Ltd v Benjamin Karuga Kibiru & Another [1986] KLR 410**, the Applicant argues that "Substantial loss is what has to be prevented... without evidence of it, it would be a rare case where an appeal would be rendered nugatory".
13. Conversely, the 1st and 2nd Respondents vehemently dispute the existence of any substantial loss. They contend that the Applicant has no legal ownership over the suit property and is merely utilizing the stay application as a dilatory tactic to "continue tilling the suit land" and engaging in "illegal agricultural activities". The Respondents remind the Court that "If there is no evidence of substantial loss to the Applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay".
14. While a stay application does not call for a deep dive into the merits of the appeal, the Court must be satisfied that the appeal is not frivolous. The Applicant asserts that her

appeal raises weighty questions of law, particularly regarding the indefeasibility of title under Section 26(1) of the Land Registration Act and the trial court's selective revocation of titles. In support, she cites *Stanley Kang'ethe Kinyanjui v Tony Ketter & Others [2013] eKLR*, noting that "An arguable appeal is not one that must succeed, but one that raises even a single bona fide issue deserving consideration".

15. The Respondents challenge the very competence of the appeal. They argue that the appeal is fatally defective because it impermissibly seeks to challenge "3 Rulings in one application and under one memorandum of appeal". Furthermore, the Respondents maintain that the Applicant is attempting to litigate "unpleaded facts" regarding plots Loitokitok/Kimana/Tikondo/746 and 783, which had "no nexus to the pleadings in this suit".

16. Section 24 of the Land Registration Act states: "Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto". The Respondents assert that no fraud was proved to defeat their absolute ownership.

17. The second condition under Order 42 Rule 6(2) requires the application to be filed without unreasonable delay. The Applicant asserts that she moved the Court "with commendable promptitude" and that there has been "no acquiescence, no indolence, and no attempt to obstruct justice". However, the chronological record presented by the Respondents paints a contrasting picture. The trial court's judgment was delivered on 11th March 2025. Following the dismissal of various review applications in August 2025, the instant application for stay was only filed on 25th November 2025. The Respondents argue that this prolonged timeline—coupled with multiple adjournments sought by the

Applicant during the review stage—demonstrates that the application "was made with unreasonable delay contrary to Order 42 Rule 6(2) (a)".

18. This Court is tasked with balancing two competing rights: the Applicant's right to an effective appeal and the Respondents' right to enjoy the fruits of a favourable judgment. The Applicant cautions that without a stay, "the appeal however meritorious risks degenerating into a purely academic exercise".

19. In Machira T/A Machira & Co Advocates vs. East African Standard the court emphasized on the need to striking a balance noting that:-

*“.....to be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court”.*

20. Having carefully weighed the rival submissions, the statutory requirements of Order 42 Rule 6(2) of the Civil Procedure Rules, and the authorities cited, this Court finds that while the Applicant may have raised arguable grounds regarding the alteration of the land register, the profound delay in seeking the stay between the date of the delivery of the judgment in March 2025 and the filing of this application in November 2025 undermines the claim of promptitude. Furthermore, the conflation of multiple rulings within a single appeal raises serious questions regarding the competence of the appellate mechanism deployed.

21. After considering both sides' arguments and the law, the Court agrees that the Applicant may have raised some valid points about the alteration of the land records. However, waiting from March 2025 to November 2025 to file this request is simply too long of a delay. Consequently, the Notice of Motion Application dated 25th November 2025 is hereby dismissed, with costs awarded to the 1st and 2nd Respondents.

Ordered accordingly.

**Dated, Signed and Delivered Virtually this 15<sup>th</sup> Day of May, 2026.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Irumba for the Respondents

Mr. Musumba h/b for Mr. Kimathi for the Appellant/Applicant

N/A by the Interested Parties

Court Assistant: Alex

**M.D. MWANGI**  
**JUDGE**

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