

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC SUIT NO. 45 OF 2018**

**(CONSOLIDATED WITH KAJIADO ELC CASE NO. 84 OF 2019)**

**JENNIFER WANJIKU TUMBES..... PLAINTIFF/RESPONDENT**

**VERSUS**

**GEORGE OSORE..... 1ST DEFENDANT/RESPONDENT**

**MOLYN CREDIT LIMITED..... 2ND DEFENDANT/APPLICANT**

**THE LAND REGISTRAR, KAJIADO..... 3RD DEFENDANT/RESPONDENT**

**AND**

**NEO DEVELOPERS LIMITED..... INTERESTED PARTY**

**RULING**

**Introduction**

1. This Ruling is in respect of the Notice of Motion Application dated 24th July 2025, filed by the 2nd Defendant/Applicant, Molyn Credit Limited. The application was filed under a Certificate of Urgency and is brought pursuant to Sections 3, 3A, and 63(e) of the Civil Procedure Act, Order 42 Rules 6 & 3, Order 51 Rules 1 & 3, and Order 22 Rule 22 of the Civil Procedure Rules.
2. The Applicant primarily seeks an order for a stay of execution of the judgment delivered on 06th May 2025, as well as the decree and all consequential orders arising therefrom. The Applicant prays that this stay remains in force pending the hearing and determination of its appeal to the Court of Appeal at Nairobi, being Civil Appeal No. Nairobi COACA/E532/2025.
3. The genesis of this application is the judgment rendered by this Court on 6th May 2025 following a trial wherein the testimony of six witnesses was heard. In the said judgment, the Court ruled in favour of the Plaintiff/Respondent. The Court ordered the revocation of

the Certificate of Title that had been issued to the 2nd Defendant for the parcel of land known as Kajiado/Kisaju/11355.

4. Furthermore, in the consolidated suit (Kajiado ELC No. 84 of 2019), the Court ordered the 2nd Defendant to compensate the Plaintiff with the market value of the suit property, quantified at Kshs. 27,000,000.
5. The 2nd Defendant's Application is supported by the grounds set out on the face of the Motion and a Supporting Affidavit sworn by Moses Anyangu, the Finance Director of the 2nd Defendant. The Applicant asserts that they are aggrieved by the judgment and have lodged an appeal raising substantial legal and factual issues. The Applicant expresses a reasonable apprehension that unless a stay of execution is granted, the Plaintiffs will proceed to execute the decree, which would subject the Applicant to substantial monetary loss and prejudice through the loss of possession and ownership of the suit property.
6. The Application is vehemently opposed by the Plaintiff/Respondent, Jennifer Wanjiku Tumbes, through a Replying Affidavit. The Respondent contends that the Applicant's supporting affidavit is misleading, misconceived, and an abuse of the court process. She maintains that the Court's judgment of 6th May 2025 was well-reasoned, noting that the Court found the land sale agreement dated 12th February 2016 to be invalid on the basis that she was not a free contracting party and that the agreement was procured without her informed consent or credible evidence of payment.

#### **Court's directions**

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

#### **Issues for determination**

8. I have carefully considered the Notice of Motion Application dated 24th July 2025, the Supporting Affidavit sworn by Moses Anyangu, the Replying Affidavit sworn by the Plaintiff/Respondent, as well as the rival written submissions filed by the parties.
9. The single issue that arises for determination is **whether the 2nd Defendant/Applicant has satisfied the conditions for grant of stay of execution pending appeal.**

**Analysis and Determination**

10. The principles governing the grant of stay of execution pending appeal are well settled under Order 42 Rule 6(2) of the Civil Procedure Rules which provides as follows:

*“No order for stay of execution shall be made under sub rule (1) unless—(a) 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 (b) 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.”*

11. It is therefore incumbent upon an applicant seeking stay of execution to demonstrate: That substantial loss may result unless the order is granted; That the application has been brought without unreasonable delay; and that the applicant is willing to furnish such security as the court may order for the due performance of the decree.

12. The purpose of an order for stay pending appeal was succinctly captured in **Chiri v Mumbi (Civil Appeal E266 of 2025) [2025] KEHC 18630 (KLR)** as:

*“..... to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of*

*the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”*

13. The Court is therefore called upon to exercise judicial discretion in a manner that balances the competing rights of the parties; namely, the right of a successful litigant to enjoy the fruits of judgment vis-à-vis the right of an aggrieved party to pursue an appeal without the same being rendered nugatory.

14. On the question whether the Applicant has demonstrated substantial loss, the Applicant contends that the impugned judgment ordered cancellation and revocation of its title over land parcel Kajiado/Kisaju/11355 and restoration of the title to the Plaintiff. The Applicant argues that unless stay is granted, the land register shall be altered and the suit property may subsequently be transferred to third parties thereby rendering the pending appeal nugatory.

15. The Court has considered this argument alongside the decision in *Kenya Shell Limited v Benjamin Karuga Kibiru & Another [1986] eKLR* where the Court held 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. That is what has to be prevented.”*

16. The decretal orders herein are not merely monetary in nature. The judgment directly affects proprietary rights over the suit property and specifically ordered cancellation of

the 2nd Defendant's title. It cannot be gainsaid that land, and particularly registered title to land, constitutes a proprietary interest protected under the law. Once the register is rectified and title reverts to the Plaintiff, there exists the possibility of further dealings being undertaken over the suit property pending appeal. Reversal of such transactions, should the appeal succeed, may occasion procedural and legal complications as well as hefty financial burdens.

17. The Applicant has further argued that the Interested Party holds a decree against it in the sum of Kshs. 27,000,000/= and that loss of the suit property would expose it to substantial financial prejudice. Although the monetary decree is in favour of the Interested Party and not the Plaintiff, the Court takes cognizance of the Applicant's apprehension that the suit property constitutes the primary asset linked to the dispute.
18. The Applicant has also submitted that the Plaintiff has no known assets apart from the suit property and cited *Satya Gandhi & Another v Commercial Bank of Africa Limited [2013] eKLR* for the proposition that substantial loss may arise where recovery may become impossible should the appeal succeed.
19. On the other hand, the Plaintiff maintains that the judgment of this Court was properly founded upon evidence demonstrating that the transfer of the suit property was unlawful and obtained without informed consent. The Plaintiff further contends that she ought not to be denied the fruits of a valid judgment.
20. The Court appreciates that the Plaintiff is indeed entitled to enjoy the fruits of her judgment. However, the Court must equally ensure that the right of appeal is not rendered illusory. In the present circumstances, the subject matter is immovable property whose

ownership remains contested before the appellate court. Preservation of the substratum of the appeal is therefore a material consideration.

21. With respect to delay, judgment was delivered on 06th May 2025 while the present application was filed on 24th July 2025. The Applicant has explained that it moved the Court after lodging its appeal and filing the requisite record of appeal. In the circumstances of this matter, I am not persuaded that the delay was inordinate or unreasonable.
22. On the issue of security, the Plaintiff urged the Court to compel the Applicant to deposit Kshs. 27,000,000/= as security. The Applicant however contends that no monetary decree exists in favour of the Plaintiff and that the proper security should be preservation of the suit property through maintenance of the prevailing status quo.
23. I have considered the rival positions. The primary decree arising from the judgment in favour of the Plaintiff concerns declaratory, injunctive and rectification orders relating to ownership of the suit property. The Applicant has indicated willingness to preserve the suit property pending appeal and has further pointed out that orders of status quo already exist over the title.
24. In my view, the ends of justice would be sufficiently served by preservation of the suit property pending determination of the appeal. Such preservation would adequately safeguard the interests of the Plaintiff while simultaneously ensuring that the appeal, if successful, is not rendered nugatory.
25. Accordingly, and having weighed the competing rights of the parties, I am satisfied that the Applicant has met the threshold for grant of stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules.

26. Consequently, I make the following orders:

- A. There shall be a stay of execution of the Judgment delivered on 6th May 2025 together with all consequential orders pending the hearing and determination of Nairobi COACA/E532/2025.
- B. An order is hereby issued maintaining the prevailing status quo in respect of land parcel Kajiado/Kisaju/11355 pending the hearing and determination of the appeal.
- C. For avoidance of doubt, there shall be no sale, transfer, alienation, charging, leasing, subdivision or any other adverse dealings with the suit property pending determination of the appeal.
- D. The costs of the application shall abide the outcome of the appeal.

It is so ordered.

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

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Kariuki for the Plaintiff/Respondent

Ms. Karuiru h/b for Mr. Githinji for the 2<sup>nd</sup> Defendant/Applicant

Court Assistant: Alex

**M.D. MWANGI**

**JUDGE**

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