



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC L APPEAL NO. 18 OF 2021

**WATHIANI INVESTMENTS LIMITED..... PLAINTIFF/
APPLICANT**

VERSUS

JANE

WAIRIMU

MWANGI.....DEFENDANT/RESPONDENT

RULING

1. In the Application dated **29th September 2025** the Plaintiff/ Applicant seeks stay of execution of the judgment delivered on 11th July 2024, pending the determination of Nairobi Court of **Appeal Civil Appeal No. E693 of 2024.**

2. The Applicant avers that notwithstanding that he has filed an Appeal at the Court of Appeal the Defendant has obtained a certificate of costs and on 29th September 2025 issued him a 14-day payment notice. The Applicant avers that he is apprehensive that the Defendant might cause transfer of the suit property to herself, which would render the Appeal nugatory.
3. He argues that his Appeal has high chances of success and that he is willing to comply with any conditions set by the Court, including the payment of security for costs to preserve the substratum of the suit.
4. The Defendant contests the application, terming it an afterthought, noting that it was brought more than a year after the judgment without any explanation for the delay. She contends that the Applicant has not taken meaningful steps to prosecute the Appeal at the Court of Appeal. In any event she argues that given that the dismissal of the suit was a negative order it is incapable of being stayed.
5. She states that she has obtained a certificate of costs against the Applicant and has initiated the process of

transferring the title document in respect of the suit property. Accordingly, the application has been overtaken by events and ought to be dismissed. In the alternative, should the Court be inclined to grant a stay, it is her case that the sum of Kshs. 1,005,053 due as costs should be deposited in court or in a joint interest-earning account held by both parties' advocates.

6. This application was canvassed by way of written submissions. Counsel for the Applicant submits that they have satisfied the requirements of **Order 42 Rule 6(2) (a)** because the Appeal at the Court of Appeal was timeously filed and the present application was filed five days after the certificate of taxation was issued. Counsel contended that they had not sought stay prior to the issuance of the certificate of costs as there was no threat of execution until they received a notice from the Defendant.
7. Counsel submits that if stay is not granted, the Applicant would suffer substantial loss and the substratum of the Appeal would be lost making it nugatory. Counsel referred

the court to the cases of **Mukuma vs Abuoga (1988) KLR 645** and **Jason Ngumba Kagu & 2 others v Intra Africa Assurance Co. Limited [2014] eKLR**. Counsel further submitted that the Applicant was ready to deposit the security of costs while balancing the interest of all parties as held in **Nduhiu Gitahi vs. Warugongo [1988] KLR 621**.

8. Counsel for the Respondent submits that the decree sought to be stayed has already been executed. The application has thus been overtaken by events and any order issued would be in vain. Counsel refers the court to the case of **Equity Bank Limited v West Link Mbo Limited [2013] eKLR**.
9. Counsel further argues that the judgement dismissed the Plaintiff's suit hence there is no directive to be stayed. In the event the Court is inclined to grant any stay, counsel argues that the Applicant should deposit security of costs of Kshs. 1,005,053 which was the taxed amount.

10. Having considered the Application and rival submissions, I find that the sole issue for determination is whether the Applicant/Plaintiff has met the threshold for the grant of a stay of execution of the judgment and decree delivered on 11th July 2024.

11. It is not in contention that aggrieved by the decision, the Applicant filed an Appeal. A perusal of the said Appeal shows that the Applicant did not seek stay of execution of the judgement and decree. Filing of the appeal did not automatically stop the execution of Judgment. The Decree Holder was thus at liberty to enforce the Judgement in line with **Order 42 Rule 6 Civil Procedure Rules** which provides;

6. (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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, and whether the application for

such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

12. It is on record that the Defendant filed a party and party bill of costs which the Applicant opposed. A ruling was delivered on 9th July 2025 granting the Defendant costs of Kshs. 1,005,053 and a subsequent certificate of costs issued on 23rd September 2025. The Applicant admits that it is the issuance of the Certificate of Costs that prompted him to file the application for stay.

13. Order 42 Rule 6 of the Civil Procedure Rules provides for stay of execution pending appeal. The court grants stay of execution on sufficient cause being shown; substantial loss would occur; the application is made

without unreasonable delay and on provision of such security as the Court may impose.

14. The powers to grant or refuse an application for stay of execution pending appeal is discretionary in that the Court is called upon to balance the interests of the Appellant with those of the Respondent as highlighted in the case of **M/s portreitz maternity -vs- James Karanga Kabia civil appeal no. 63 of 1997 where the court stated;**

That right of appeal must be balanced against an equally weighty right, that of the Plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the Plaintiff of that right.

15. . The overriding objectives of the Civil Procedure Act places on the court the responsibility to ensure that the ends of justice are met for both parties. This was clearly spelt out in the case of **Transporters Ltd. vs. Absalom Dova Lumbasi [2012] eKLR**, thus:

“The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination.”

16. In balancing the rights of both parties the court allows the application for stay subject to deposit of security in the following terms;

a) Stay of execution for the taxed costs is granted pending the hearing and determination of the appeal subject to (b) below

b) The Appellant is to deposit an amount of Kshs 1,005,053 in a joint interest earning account by both advocates

c) The Respondent is to have the costs of this application assessed at Kshs 20000.

Dated, Signed and Delivered virtually at Kajiado this 7th day of May 2026.

JUDY OMANGE

JUDGE.

In presence of

Mr Mulinge for Plaintiff/ Applicant.

Ms Bonde for Defendant/ Respondent.

Peter - Court Assistant.