

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**COMM. APPEAL NO. E231 OF 2025**

**BETWEEN**

**PALUGI & COMPANY LIMITED.....**  
**.....APPELLANT**

**AND**

**OKONGO ODIWUOR J. KENNEDY .....**  
**RESPONDENT**

**RULING**

**Introduction & Background**

1. The Appellant, through the Notice of Motion dated 3<sup>rd</sup> September 2025 seeks to stay the execution of the subordinate court's judgment of 4<sup>th</sup> August 2025 where a declaration was made that a valid contract existed between the parties, a permanent injunction was issued restraining the Appellant from dealing and interfering with the Respondent's quiet possession of the Apartment No. B-403 on LR No. 209/4389/5, *108 Riverside Apartments* and the Appellant was compelled to complete the sale of the property to the Respondent.

2. This application is supported by the grounds on its face and the affidavits of the Appellant's director, Huang Ke sworn on 3<sup>rd</sup> September 2025 and 22<sup>nd</sup> September 2025. It is opposed by the Respondent through his replying affidavit sworn on 8<sup>th</sup> September 2025 and the parties have also supplemented their arguments by filing written submissions which I have considered and I will be making relevant references to the same in my analysis and determination below.

### **Analysis and Determination**

3. The singular issue for determination is whether the Appellant has established a valid basis for this court to grant an order for stay of execution. The legal framework for granting a stay of execution pending appeal is well settled under **Order 42 Rule 6** of the **Civil Procedure Rules**. The Appellant must demonstrate that it will suffer substantial loss if the order is not granted, that the application has been made without unreasonable delay; and that it is willing to provide such security as the court may order for the due performance of the decree.

4. The Appellant states that the stay is necessary to prevent the appeal from being rendered nugatory as the Respondent has already demanded the bank details to pay the outstanding balance

and enforce the transfer. That if the Apartment is transferred to the Respondent, it will be practically impossible for the Appellant to recover it, even if they win the appeal. The Appellant believes the appeal has a high chance of success claiming that the learned magistrate erred in law by enforcing a land sale contract that was never signed by either party, which goes against the strict requirements of **section 3(3)** of the ***Law of Contract Act(Chapter 23 of the Laws of Kenya)***. That the subordinate court granted a declaration that a valid contract existed even though the Respondent never asked for this specific order in his suit and that this was unfair and prejudiced its defense.

5. The Appellant states that without a stay, it will suffer substantial loss and irreparable harm by being forced to give up a valuable property based on a legally unenforceable agreement.
6. In response, the Respondent depones that despite an interim injunction being issued by the subordinate court in February 2023, the Appellant tried to refund the Respondent's money to defeat the contract. That after the judgment, the Appellant refused to provide bank details to receive the final payment, frustrating the Respondent's attempt to comply with the court's order.

7. The Respondent also claims that the Appellant issued a new offer letter for the same Apartment to a third party in January 2023, while the case was ongoing and the injunction was in place and this, he argues, shows a clear intention to make an unlawful profit. He states that the appeal will not be rendered nugatory as the decree is for the sale of land in exchange for money. If the appeal succeeds, the transaction is fully reversible as the Respondent can return the Apartment, and the Appellant can refund the money. Therefore, no irreparable harm will occur and the Respondent states that the Appellant has not met the conditions of a stay, that the alleged loss is not substantial, as the Appellant is a developer who will simply receive the purchase price. The Respondent avers that he will suffer greater prejudice having waited over two years for the property and incurred significant legal costs.
8. For these reasons, the Respondent urges the court to dismiss the Appellant's application for a stay of execution and in the alternative, if a stay is granted, the Respondent argues it should be conditional on the Appellant providing strict security, such as depositing the full title deed of the Apartment in court. The Respondent states he is ready and willing to pay the balance of the

purchase price immediately and offers to deposit the full amount in court within seven (7) days if the court so orders.

9. I have gone through the pleadings and the submissions and I am persuaded by the Respondent's arguments that the Appellant has not demonstrated the kind of substantial loss that would warrant a stay. It is not lost to me that the judgment of the subordinate court is an order for specific performance, that is, transfer of land in exchange for money. As the Respondent has stated, this transaction is fully reversible and if the Appellant wins the appeal, the court can simply order the Respondent to transfer the property back and any loss is quantifiable and can be remedied by restitution.
10. The evidence shows the Appellant has already tried to sell the Apartment to a third party for Kshs. 13.5 million and which would have raked in a Kshs. 3 million profit while the case was ongoing. This leads me to conclude that the Appellant's primary interest is financial gain, not the preservation of a unique asset. The substantial loss here would be suffered by the Respondent if he is denied the Apartment he has already paid Kshs. 8.34 million towards. The Appellant has claimed that the contract is "non-existent" and that the Respondent's interest is about money. If that

is true, then the Appellant cannot simultaneously argue that being forced to complete the sale causes it "irreparable" or "substantial" loss.

11. On security, I note that the Appellant has been general about the same as opposed to the Respondent who has made a more specific proposal of depositing the full outstanding balance in court within seven days. This demonstrates that the Respondent's interest can be protected, while the Appellant has proposed no mechanism to protect the Respondent if the stay is granted and the appeal fails. I am also in agreement that in terms of convenience, favour tilts towards the Respondent. The existence of the offer to a third party for a higher price strongly suggests that the Appellant is trying to benefit from rising property values at the Respondent's expense. The Respondent is an individual who has paid a significant sum and has waited years for the property. The Appellant is a developer who has already received most of the money and is now trying to keep both the property and the funds.

### **Conclusion and Disposition**

12. In sum, while the Appellant has an arguable appeal regarding the existence of a

signed agreement for sale of land, the practical realities of this application favor the Respondent. Granting a stay would reward the Appellant's obstructive conduct of refusing bank details and potentially allow them to sell the property to a third party pending the appeal, which would cause the Respondent irreparable harm. The upshot is that the application dated 3<sup>rd</sup> September 2025 stands dismissed with costs being in the cause

**DATED SIGNED AND DELIVERED virtually at NAIROBI this  
8<sup>th</sup> DAY of MAY 2026**

.....  
**J.W.W. MONGARE  
JUDGE**

**IN THE PRESENCE OF**

1. N/A for the Appellant
2. N/A for the Respondent
3. Amos- Court Assistant