



**Wakf Commissioners of Kenya v Kabundu Holdings Limited (Environment and Land Case E034 of 2023) [2025] KEELC 5344 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5344 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E034 OF 2023**

**YM ANGIMA, J  
JULY 17, 2025**

**BETWEEN**

**WAKF COMMISSIONERS OF KENYA ..... PLAINTIFF**

**AND**

**KABUNDU HOLDINGS LIMITED ..... DEFENDANT**

**RULING**

**A. The Defendant's Application**

1. By a notice of motion dated 15.03.2025 brought pursuant to Order 22 Rule 22, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3A, 63E of the *Civil Procedure Act* and all other enabling provisions of the law, the defendant sought a stay of execution of the judgement delivered on 19.12.2024 pending the hearing and determination of Mombasa Court of Appeal Civil Appeal No. E039 of 2025 Kabundu Holding Limited v Wakf Commissioners of Kenya.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Patrick Kabundu on 15.03.2025. It was stated that the defendant did not file this application immediately after judgment because it was waiting for certified copies of judgment, which were received on 15.01.2025. The defendant pleaded that its tenants occupying the suit property stood to lose their investment if the same was demolished. The court was urged to allow the defendant to remain in occupation until the appeal is heard and determined. The defendant offered to deposit Kshs 100,000 within 60 days as security for costs.

**B. Plaintiff's Response**

3. The plaintiff opposed the application vide a replying affidavit sworn by Ibrahim Mohamed Bulushi on 24.04.2025. It was stated that the application was an afterthought, having been made after the lapse of the 90-day grace period of eviction given by the court. It was argued that the defendant could not contend that the delay in seeking a stay was occasioned by a delay in acquiring certified copies of



the proceedings and judgment as they are not the requisites for applying for a stay of execution. The plaintiff also stated that the defendant had failed to furnish security of costs and urged the court to order the defendant to deposit Kshs 50,000,000 as security since the defendant admitted to collecting rent from tenants despite having no lease with the plaintiff.

### **C. Directions on Submissions**

4. When the application was listed for inter-partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The plaintiff filed submissions dated 29.04.2025 whereas the defendant had not filed submissions by the time of preparing the ruling.

### **D. Issues for Determination**

5. The court has perused the application dated 15.04.2025 the responses thereto and the material on record. The court is of the view that the following key issues arise for determination herein:
  - a. Whether the defendant has made out a case for the grant of a stay pending appeal.
  - b. Who shall bear the costs of the application.

### **E. Analysis and Determination**

#### **a. Whether the defendant has made out a case for the grant of a stay pending appeal**

6. Order 42 Rule 6 of the Civil Procedure Rules provides for a stay of execution in the following terms:
  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.
  2. 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.
7. The factors to be considered in an application for a stay of execution pending appeal were summarised in the case of *Halai & Another v Thornton & Turpin (1963) Ltd (1990) KLR 365* as follows;

“Thus, the superior court’s discretion is fettered by three conditions. Firstly the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable delay.”
8. The court is of the view that the defendant has not demonstrated any evidence of substantial loss. Further to that, the defendant has admitted to having several tenants on the suit property and has been



collecting rent from them. The defendant is not residing on the suit property but rather renting and collecting rent which does not necessarily amount to evidence of substantial loss that would require an order of stay of execution.

9. Moreover, the court has noted that the instant application was filed on 17.03.2025, which is about 3 months after the judgment was delivered on 19.12.2024. As submitted by the plaintiff, the reason given by the defendant was not credible or satisfactory since it did not need certified copies of certified proceedings, judgment and certificate of delay to file this application for stay.

**b. Who shall bear the costs of the application**

10. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the plaintiff shall be awarded the costs of the application.

**F. Conclusion and Disposal Order**

11. The upshot of the foregoing is that the court finds and holds that the defendant has failed to satisfy the requirements set out in Order 42 Rule 6 of the Rules. As a consequence, the court makes the following orders for the disposal of the application;
  - a. The notice of motion dated 15.03.2025 is hereby dismissed in its entirety.
  - b. For the avoidance of doubt, the interim stay of execution in force is hereby vacated.
  - c. The plaintiff is hereby awarded the costs of the application.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 17<sup>TH</sup> DAY OF JULY, 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Bosire for Plaintiff

Mr. Kabundu for Defendant

