



**Kenyansa v Chebii (Environment and Land Appeal E012 of 2025)  
[2025] KEELC 5405 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5405 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND APPEAL E012 OF 2025**

**CK NZILI, J  
JULY 16, 2025**

**BETWEEN**

**ROSE MONGINA KENYANSA ..... APPELLANT**

**AND**

**JACOB KIPCHUMBA CHEBII ..... RESPONDENT**

**RULING**

1. A party seeking a stay of execution has to apply without unreasonable delay, demonstrate that it will suffer substantial loss and lastly, offer security for due realization of the decree should the appeal not succeed. The applicant has sought for stay through an application dated 25/4/2025. The grounds are set on the face of the application and in a supporting affidavit sworn by Rose Mongina Kenyansa on the same date. She avers that the judgment at the lower court was scheduled for 28/4/2025, but was delivered without notice on 3/4/2025. The applicant avers that she only came to know about the outcome when the respondent invaded her home and forcefully evicted her from the suit land.
2. The applicant deposes that the respondent has never owned the land he claimed, measuring 12.7 acres, now awarded to him by the trial court.
3. The applicant deposes that the appeal has arguable points, since the respondent had not met the ingredients of adverse possession, the specific portion to be excised was not specified in the judgment and hence, the respondent has taken up her matrimonial home as part of it, the alleged sale agreements were no signed by either herself or her late husband. The same are attached as annexures marked RKM-3(a), (b), (c), (d), (e), and (f), and 4(a), (b), and (c), and 5(a) and (b).
4. The applicant avers that should the execution of the judgment proceed, she could suffer irreparable loss and damage, including being forcefully removed from her matrimonial home. The applicant asks to be exempted from providing security, as it would impose an undue and numerous burden on her, for this is not a money decree. The applicant deposes that the original certificate of title is in the custody



- of the respondent's land surveyor, who testified at the lower court and the Executive Officer has been authorised to sign the necessary transfer forms; hence, the same are enough assurance on the execution of the decree, or to act as security.
5. The application is opposed through a replying affidavit of Simon Korreng Lokelima sworn on 16/6/2025, whose contents unfortunately address an application dated 3/4/2025 and issues not related to the application for stay. Incidentally, the replying affidavit relates to ELC No. 59 of 2004, plot Nos. 41 and 1492, which have no connection to land parcel No. Trans Nzoia/Mito-Mbili/180.
  6. The applicant relies on written submissions dated 13/6/2025. It is submitted that the application meets the provisions of Order 42 Rule 6(1) of the Civil Procedure Rules. The applicant submits that, regardless of whether a similar application was dismissed at the lower court, this court is seized of independent original jurisdiction as held in *Patrick Kalava & Another -vs- Philip Kamosu & Rhoda Ndanu* [2016] KEHC 771 [KLR] and *Equity Bank (K) Ltd Westlink Mbo Ltd & Others* [2024] KECA 518 [KLR], *Girbux Singh Suri & another -vs- Royal Credit Limited* [1995] KECA 123 (KLR), and *Githunguri -vs- Jimba Credit Corporation Ltd (No 2)*[1988] eKLR.
  7. The respondent relies on written submissions dated 9/6/2025. Reliance is placed in *Family Bank Ltd -vs- Isaack Mathenge Guandaru Kitale ELC Appeal No. E003 of 2022*, *Vipingo Ridge Ltd -vs- Swalehe Ngonge Mpitta* [2021] eKLR and *Pius Mbithi & Another -vs- Daniel Mutiria & Another* [2017] eKLR, and *Nicholas Kiptoo Arap Korir Salat -vs- Independent Electoral and Boundaries Commission & 6 others* [2013] eKLR.
  8. The judgment at the lower court was delivered on 3/4/2025. This application was filed on 25/4/2025. Courts have held that the law has not defined what is maximum and or minimum delay. It all depends on the circumstances of each case, since even one day's delay could be inordinate. The applicant has explained that the judgment was delivered ex parte without her being notified.
  9. The respondents have not denied that fact. My finding is that the application was not filed with unreasonable delay. In *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* [2012] eKLR, the court observed that an impending execution per se, does not amount to substantial loss and that a party must establish other factors showing that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal. The court said that substantial loss is what has to be prevented, by preserving the status quo and because such a loss would render the appeal nugatory.
  10. Substantial loss is that loss which is real or of value, as distinguished from a loss without value or what is nominal. See *Tropical Commodities Suppliers Ltd & Others -vs- International Credit Bank Ltd* [2004] 2EA 331. Security for stay is paramount; the purpose is to guarantee the due performance of the decree, should the appeal not succeed. It is not aimed at punishing the judgment debtor as held in *Arun C. Sharma -vs- Ashana Raikundlia T/A Raikundalia & Co. Advocates & Others* [2014] eKLR.
  11. Applying the foregoing principles to the instant application, the applicant has faulted the finding of the trial court that the respondent had not met the ingredients of adverse possession.
  12. She has said that out of the judgment, the respondent has targeted her matrimonial home to hive off the decreed 12.7 acres. The court notes the judgment was delivered despite the holding that the lower court lacked jurisdiction to hear and determine matters on adverse possession.
  13. Jurisdiction is everything and without it, a court of law must put down its tools. I find the appeal would be rendered nugatory if a stay is not granted. Equally, if the applicant is evicted from the matrimonial home, there will be a substantial loss. Additionally, the respondent does not dispute that the original title deed is held by the land surveyor. The upshot is that the application dated 25/4/2025 is allowed.



14. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT  
KITALE ON THIS 16<sup>TH</sup> DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

Applicant in person present

Mwemeke for respondent present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

