



**Munyoki v Mue & 4 others (Environment and Land Appeal  
E058 of 2024) [2025] KEELC 5385 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5385 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E058 OF 2024**

**JA MOGENI, J  
JULY 16, 2025**

**BETWEEN**

**PETER MWANGANGI MUNYOKI ..... APPELLANT**

**AND**

**JUSTUS MUINDU MUE ..... 1<sup>ST</sup> RESPONDENT**

**JUSMAH LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**PETER MWAURA KAMAU ..... 3<sup>RD</sup> RESPONDENT**

**KAKIGINAR INVESTMENT LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**LAND REGISTRAR RUIRU ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This Honorable Court was tasked to make a determination on the filed Notice of Motion application dated 24/07/2024. It was brought by Peter Mwangangi Munyoki Appellant/Applicant herein as against the Respondents herein.
2. The Court was moved under the dint of Order 42 Rule 6 seeking the following orders:-
  1. Spent.
  2. That the Honourable Court be pleased to stay execution of the Judgment/Order of the Honourable Court delivered by Honourable Joseph Were on the 30<sup>th</sup> Day of May 2024 in Environment and Land Court Case No. E066 of 2021 and the ensuing decree pending the hearing and determination of the appeal filed herein.
  3. That costs of and incidental to this application do abide the outcome of the intended appeal.
  4. Any other reliefs that the Court may deem fit to grant.



3. The application is supported by an Affidavit sworn by the Appellant. He deposed that the orders made by the Subordinate Court in the Judgment pose imminent threat to his ownership of the suit property and there is apprehension of his family being evicted from the suit property where he has built his family home.
4. The 4<sup>th</sup> Respondent opposed the application through a Replying Affidavit in which he deposed that the Judgment delivered by the Honourable Trial Magistrate was sound, fair and accommodative towards all the parties to the suit hence the Applicant's Appeal lacks merit.
5. He stated that from his perusal of the Appellant's Memorandum of Appeal he noted that it is premised on mere denial of facts and has not referenced errors on the point of law hence it is bound to fail.
6. The 4<sup>th</sup> Respondent averred that the Appellant filed the primary suit alongside an application seeking interim orders, the Honourable Court delivered the Ruling on the 30<sup>th</sup> July, 2021 and directed the Appellant to halt further construction on the suit property.
7. However, the Appellant ignored the Court orders and proceeded with the construction, and he is currently residing on the said property with his family to the detriment of the 4<sup>th</sup> Respondent.
8. According to the 4<sup>th</sup> Respondent, the Appellant has been in possession of the suit property for the last four (4) years to date, while the 4<sup>th</sup> Respondent investment of Kes. 2,400,000/ is slowly being diminished by the high rate of inflation.
9. The 4<sup>th</sup> Respondent implored the Honourable Court to direct the Appellant to place security for cost based on the 4<sup>th</sup> Respondent's investment placed on the property. He further stated that the right of appeal must be balanced against an equally weighty rigid right of the 4<sup>th</sup> Respondent to enjoy the fruits of the Judgment delivered in his favour and that it is in the interest of Justice for the Appellant/Applicant to place security for cost which will avoid prejudicing the 4<sup>th</sup> Respondent right to the suit property.
10. The application was canvassed through written submissions which both sides duly filed. The Applicant argued <sup>that apprehended execution for the recovery of the ensuing decree shall</sup> irreversibly and adversely affect him in economic and social terms and would cause great hardship to his family.
11. The Applicant/Appellant contends that he has an arguable appeal and will suffer substantial loss and irreparable harm if the Respondent is allowed to execute the decree before the Appeal is heard and thereby render the intended appeal nugatory.
12. The Appellant avers that he stands to be highly prejudiced should the execution of the decree herein proceed without the hearing and determination of this Appeal thus it is only just for this Honourable Court to issue a stay of execution of the decree herein pending the hearing and determination of this Appeal.
13. I have considered the application, the Affidavits, the submissions and the authorities cited. The only issue for determination is whether the orders sought ought to be granted.
14. The jurisdiction to grant stay of execution pending appeal is circumscribed within Order 42 rule 6 (1) and (2) of the Civil Procedure Rules, 2010. The Rule provides as follows:-
  - “6. No appeal or second appeal shall operate as a stay of execution or proceedings  
(1) under a decree or order appealed from except 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.”

15. The upshot of those provisions is that a litigant seeking stay pending appeal must demonstrate that substantial loss will result to him if stay is not granted, and that the application has been made without unreasonable delay. Such a litigant is also required to give such security as the Court may order for the due performance of the decree. See *Kenya Power & Lighting Co. Ltd v Kigaita Ngare Unduthu & 36 Others* [2020] eKLR and *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* [1986] eKLR.
16. As Platt Ag JA (as he then was) stated in *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* (supra), substantial loss is the corner stone of the jurisdiction to grant stay of execution pending appeal. It is virtually impossible for such an application to succeed if an Applicant fails to demonstrate that he will suffer substantial loss if stay is not granted.
17. A perusal of the Judgment appealed from shows that the Subordinate Court found in favour of the 4<sup>th</sup> Defendant and required the Appellant to vacate the suit property within 90 days. It is that eventuality that the Applicant is apprehensive of. The question that must be answered is whether the implementation of the order will cause substantial loss to the Applicant.
18. It is not just any loss that warrants granting stay of execution pending appeal. It must be substantial loss. The word substantial means significant or large and having substance. Thus, it should be loss that is tangibly above normal loss. After all, in an application such as the present one, the Applicant is up against a successful litigant and is seeking to postpone execution of a valid decree.
19. The Court, in *RWW vs. EKW* [2019] eKLR, addressed the purpose of a stay of execution order pending appeal, in the following words:-

“The purpose of an application for stay of execution pending an appeal is 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.”



20. It is well settled that the purpose of stay of execution is to preserve the substratum of the case pending the hearing and determination of an appeal. A successful litigant has a right and expectation to enjoy the fruits of his or her Judgment, but a Respondent who has lost a case also has a right of appeal to ventilate his or her displeasure with the Judgment of the Court.
21. In the case of *Regional Institute of Business Management v Lucas Ondong' Otieno* [2020] eKLR the High Court observed as follows;
- “20. Weighing the Applicants' right to have his dispute determined fairly in a Court of law or competent tribunal as provided in Article 50(1) of *the Constitution* of Kenya and the equally important Respondent's fundamental right that justice delayed is justice denied as stipulated in Article 159(2)(b) of *the Constitution* of Kenya, this Court determined that there would be more injustice and prejudice to be suffered by the Applicants if they were denied an opportunity to ventilate their Appeal on merit in the event an order for stay of execution was not granted.”
22. The Court must balance these rights to ensure that justice is served.
23. Further in the case of *Kenya Commercial Bank Limited vs Sun City Properties Limited & 5 Others* [2012] eKLR the Court held;
- “In an application for stay, there are always two competing interests that must be considered. These are that a successful litigant should not be denied the fruits of his Judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should be always be balanced.”
24. On the issue whether the application was filed timeously, it is on record and not disputed that the application was filed one and a half months after the delivery of the Judgment and this is not inordinate delay after the Judgment was rendered. I find that the Applicant has met this threshold.
25. With regard to security for costs, the Court in *Absalom Dova vs. Tarbo Transporters* [2013] eKLR, stated:-
- “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 ...”
26. The Applicant did not provide any security and neither did he express any readiness or willingness to abide by reasonable terms and conditions for security for due performance of the decree. The grant of stay of execution is discretionary and the Court will exercise this discretion on case by case basis depending on the circumstances of the case.
27. The most important limb of the application for stay of execution is proof of substantial loss and it should be noted that mere mention or alleging that an Applicant will suffer substantial loss is not enough. The Applicant has stated that he constructed a house on the suit property and his family is



living on the suit property. There is no valuation attached to show the magnitude of loss that he may suffer if the order of stay is not issued.

28. The Applicant contends that the refund of Kesh 650,000 ordered by the Court by the 1<sup>st</sup> Defendant to the Applicant is not enough to compensate him for the developments he has put on the suit property to make it into a family home. It is not lost to the Court that the 4<sup>th</sup> Respondent in whose favor the Judgment was issued equally spent Kesh 2,400,000 in purchase of the suit property.
29. The 4<sup>th</sup> Respondent is of the view that it is important that the Appellant places security if the Court were to grant the stay. The Appellant's claim that he will suffer substantial loss without presenting before the Court what substantial loss he may suffer may not be an indicator for substantial loss due to the fact that the Court has outlawed his occupation in the Judgment that he is appealing against. The fact that a party is in occupation does not guarantee him or her continued occupation as such occupation might be in furtherance of trespass.
30. The issue of substantial loss was aptly discussed in the case of *Silverstein vs. Chesoni* (2002)1 KLR 867 where the Court observed that substantial loss is the cornerstone of both jurisdictions and is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.
31. I have considered the application, the submissions by Counsel and come to the conclusion that it would be in the interest of justice to order a stay of execution with a condition that the Applicant deposits Kshs. 300,000/= in a joint interest earning account of the Advocates on record within the next 30 days failure to which the stay order lapses. The cost of the Application will abide the Appeal.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 16<sup>TH</sup> DAY OF JULY 2025  
VIA MICROSOFT TEAMS.**

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**MOGENI J  
JUDGE**

In the presence of:

Ms. Wakaba holding brief for Mr. Katisya for the Appellant

1<sup>st</sup> and 2<sup>nd</sup> Respondents – Absent

Mr. Muturi holding brief for Mr. Tumu for the 3<sup>rd</sup> Respondent

Mr. Waweru holding brief for Mr. Juma for the 4<sup>th</sup> Respondent

5<sup>th</sup> Respondent - Absent

Mr. Melita – Court Assistant

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**MOGENI J  
JUDGE**

