



**Njogu v Njoroge & another (Environment and Land Appeal
E172 of 2024) [2025] KEELC 5957 (KLR) (27 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5957 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E172 OF 2024**

**CG MBOGO, J
AUGUST 27, 2025**

BETWEEN

LUCY WAMBURA NJOGU APPELLANT

AND

KENNEDY NDUMBI NJOROGE 1ST RESPONDENT

NAIROBI COUNTY GOVERNMENT 2ND RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 11th November, 2024 filed by the appellant/applicant and it is expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the [Civil Procedure Act](#), seeking the following orders: -
 - a. Spent.
 - b. That pending the hearing and determination of this application, this honourable court be pleased to order a stay of execution of the orders made by the learned trial magistrate on the 30th November, 2023 in the Chief Magistrate Court at Milimani in CMCC 8371 of 2019 formerly ELC No. 78 of 2017.
 - c. That pending the hearing and determination of the appeal, this court be pleased to stay execution of the judgment delivered on 30th November, 2023 in the chief magistrate court at Milimani in CMCC 8371 of 2019 formerly ELC No. 78 of 2017.
 - d. That the costs of this application be in the cause.
2. The application is premised on the grounds inter alia that the orders issued on 30th November, 2023 in CMCC No. 8371 of 2019 will be executed. The application is supported by the affidavit of the appellant/applicant sworn on even date. The appellant/applicant deposed that she acquired the suit property having entered into a sale agreement with one Juliana Njeri Ndungu. That after transfer of



- the suit property known as 276 Kahawa West Phase II, she started to make arrangements for developing the same, and that after sometime she learnt that the 1st respondent had trespassed on the same and began construction.
3. The appellant/applicant deposed that being dissatisfied with the judgment that was delivered on 30th November, 2023 she has preferred an appeal, and that if stay is not granted, the 1st respondent will proceed to execute the orders. Further, that if the judgment is executed, the appeal will be rendered nugatory, and she stands to suffer irreparable loss and damage.
 4. The 1st respondent filed his replying affidavit sworn on 15th January, 2025 in response to the application. He deposed that he purchased the suit property on 20th September, 2016 from Dominic Ndungu Waweru who had purchased it from Antony Waweru Kimani who was an allottee of the County Government of Nairobi. He further deposed that he took possession and commenced construction, and that in February 2017, the appellant/applicant hired goons to invade and demolish his structure. The 1st respondent deposed that since delivery of the judgment, he has commenced developing the property and that he has suffered irreparable loss as a result. Further, that there is nothing to stay as the court only dismissed the appellant/applicant's suit.
 5. The application was canvassed by way of written submissions. The appellant/applicant filed her written submissions dated 25th March, 2025 where she raised two issues for determination as listed below:-
 - a. Whether the honourable court should grant stay of the judgment delivered on 30th November, 2023 in the Chief Magistrate Court at Milimani in CMCC 8371 of 2019 formerly number ELC 78 of 2017 pending the hearing and determination of the appeal.
 - b. Who is to bear the costs of the two applications.
 6. On the first issue, the appellant/applicant submitted that unless this court issues stay of execution, the 1st respondent could dispose of the subject matter of this appeal. The appellant/applicant relied on the cases of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, and Antoine Ndiye v Africa Virtual University [2015] eKLR, and submitted that she stands to suffer financial loss having purchased the same and being issued with title documents. She further submitted that there has been no unreasonable delay owing to ELC Misc No. E194 of 2024. Further, she submitted that the court in its judgment did not award any decretal sum other than costs and she is ready to take the court's direction on the issue of security.
 7. On the second issue, the appellant/applicant submitted that costs be in the cause.
 8. The 1st respondent filed his written submissions dated 28th March, 2025. The contents of the written submissions refer to the application dated 18th September, 2024 and have no relation to the matter before court. I have considered the application, the replying affidavit, and the written submission filed by the appellant/applicant. The issue for determination is whether the appellant/applicant is entitled to stay of execution pending the appeal.
 9. Order 42, Rule 6 (1) and (2) of the Civil Procedure Rules provides as follows:-
 - “(1) No appeal or second appeal shall operate as a stay of execution or proceedings 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 subrule (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.”

10. There are three conditions for grant of stay order pending Appeal under Order 42 Rule 6 (2) of the Civil Procedure Rules to which: -

- a. The court is satisfied that substantial loss may result to the applicant unless stay of execution is ordered;
- b. The application is brought without undue delay and
- c. 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.

11. The purpose of stay of execution is to preserve the substratum of the case. In the case of Consolidated Marine. vs. Nampijja & Another, Civil App.No.93 of 1989 (Nairobi), the court held that:-

“The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory”.

12. While the court is keen to ensure that the subject matter is preserved, the appellant/ applicant must satisfy the conditions prescribed under Order 42 Rule 6 of the Civil Procedure Rules. In this case, it is not disputed that the application has been brought without delay. The appellant/applicant contends that unless the court grants stay, execution will take place which will render the appeal nugatory. I have perused the documents annexed to the application. It is not disputed that judgment in this matter was delivered on 30th November, 2023. In conclusion, the trial court dismissed the appellant/applicant’s suit with costs. In other words, the orders were negative.

13. Stay of execution pending appeal is not available for issue in the circumstance for the reason that there is nothing to stay. In view of that, the application is not fit for consideration for this purpose. The same lacks merit. The notice of motion dated 11th November, 2024 is dismissed. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 27TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

27/08/2025.



In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Wainana holding brief for Mr. Machua for the Appellant/Applicant

Mr. Kimani for the 1st Respondent

Mr. Ndung'u holding brief for Mr. R.M. Wafula for the 2nd Respondent

