



REPUBLIC OF KENYA



Soy & 3 others v County Government of Trans Nzoia & another (Environment & Land Case 32 of 2012) [2025] KEELC 875 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEELC 875 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 32 OF 2012
CK NZILI, J
FEBRUARY 26, 2025**

BETWEEN

**JOEL KIPSANG SOY 1ST PLAINTIFF
DAVID KIPKURUI KOECH 2ND PLAINTIFF
JOSEPH TAMUI MENGICH 3RD PLAINTIFF
PATRICK BOSIRE 4TH PLAINTIFF**

AND

**COUNTY GOVERNMENT OF TRANS NZOIA 1ST DEFENDANT
AINEA O INDAKWA 2ND DEFENDANT**

RULING

1. The application before the court is dated 25/10/2024. The applicant is seeking for a stay of execution of the judgment or decree issued on 8/10/2024, pending hearing and determination of the intended appeal at the Court of Appeal. The reasons are contained on the face of the application and in a supporting affidavit of Joel Kipsang Arap Soy, sworn on 25/10/2024 on behalf of the 2nd - 4th applicants. It is averred that a Notice of Appeal and a request for proceedings have been undertaken as per annexures JKAS'1 and '2'. Out of the judgment, it is deposed that the applicants were ordered and did surrender the original title deed of the suit property, but are now apprehensive that there will be execution of the decree by the respondents to recover the land.
2. If execution ensues, the applicants depose that the intended appeal, which has high chances of success, would be rendered nugatory; they will suffer irreparable loss and damage, for the respondents may interfere with the subject land by altering the title deeds or alienating the land. The applicants aver that the application was filed on time, it is in the interest of justice to grant the orders sought, and they are ready and willing to abide by any terms or directions issued by the court.



3. The application is opposed through grounds of opposition dated 22/11/2024 for being defective; misconceived; based on wrong principles of law and procedure; filed in the wrong court; raising no substantial questions of law or exceptional circumstances; lacking merits; filed after inordinate delay; lacking explanation for the delay; the orders sought amount to interruption of expeditious disposal of the matter; it is an afterthought; not legally tenable and does not meet the evidentiary threshold for grant the orders sought.
4. The applicant relies on written submissions dated 18/12/2024. Reliance is placed on James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2012] eKLR and Stanley Kangethe Kinyanjui -vs- Tony Keter & Others [2013] eKLR.
5. The respondents rely on written submissions dated 22/1/2025. Reliance is also placed on Mukucha -vs- Abuoga 1988) KLR 645, Turbo Highway Eldoret Ltd -vs- Miniu (Civil Appeal E040 of 2021 [2022] (KEHC 10197) (KLR) (30th June 2022), Christopher Ndolo Mutuku -vs- C.F.C. Stanbic Bank Ltd [2015] eKLR, Jaber Mohsen Ali & Another vs Priscillah Boit & Another (2014) eKLR, James Wangalwa & Another -vs- Agnes Naliaka Cheseto (supra) and DT Dobie & Co. Ltd -vs- Joseph Mbaria Muchina & Another [1980] eKLR.
6. What the applicants are seeking is a stay of execution of the judgment or decree of the court but not a stay of proceedings as submitted by the respondents. A party seeking a stay of execution pending appeal has to apply without unreasonable delay, demonstrate substantial loss to be suffered in the absence of a stay, and lastly, offer security for the due realization of the decree should the appeal not succeed.
7. In Gerald Kithu Muchanje -vs- Catherine Muthoni Ngare & Another KECA 511 (2020) eKLR, the court said that the law has not defined the maximum or minimum delay. It all depends on the circumstances of each case for even a one-day delay could be unreasonable. The reason for the delay must also be satisfactorily explained. See M'Magiri v Nkogwe (Sued as legal representative of the Estate of Nkanatha M'Magiri) (Environment and Land Miscellaneous Application E006 of 2024) [2024] KEELC 4178 (KLR) (8 May 2024) (Ruling) and Unibee Construction Ltd -vs- Lorot & Another (Suing as the legal administrator of the estate of Lomerinyang Chepsien ELC Appeal 24B of 2024 [2025] KEELC 507 [KLR] [13th February 2025] (Ruling).
8. In this application, the judgment was delivered on 8/10/2024. The order of cancellation and certification of the RIM was to be effected immediately. The application was filed on 25/10/2024. In Andrew K. Chemaringo -vs- Paul Kipkorir Kibet [2018] eKLR, the court held that a plausible and satisfactory explanation for the delay is the key that unlocks the flow of the discretionary power of the court in favor of the applicant. Valid and clear reasons for the delay have not been offered. Substantial loss is what is to be prevented from happening. An official search to confirm whether or not the reversal of the records has occurred has not been given by the applicants.
9. In RWW -vs- EKW [2019] eKLR, the court observed that substantial loss is the cornerstone of stay, since it is what to be prevented from happening by preserving the status quo. Evidence of substantial loss must be demonstrated by cogent and tangible evidence, as held in James Wangalwa & Another -vs- Agnes Cheseto (Supra) and in Kenya Shell Ltd -vs- Benjamin Karuga Kibiru & Another (1986) KECA 94[KLR].
10. It is not enough to allege that there is an impending execution without demonstrating how the substratum of the appeal was likely to dissipate or change. In Samvir Trustee Ltd -vs- Guardian Bank Ltd [2007] KEHC (2488) [KLR], the court observed that it is not enough to merely put forward allegations or assertions of substantial loss, since a court will not consider mere assertions of substantial loss on the face of it. The applicants have not told the court who is in occupation of the suit land,



- what developments they have thereon, and if they face an eviction. In *Port Reizt Maternity -vs- James Karanja Kabia Civil Appeal No. 63 of 1997*, the court observed that there must be a just cause for depriving the plaintiff of the right to enjoy the fruits of his judgment.
11. In *Stanley Kangethe Kinyanjui -vs- Tony Keter & Others [2013] KECA 378 [KLR]*, the court said that the term nugatory must be given its full meaning and that it means trifling, worthless, futile, or invalid. The court further said that whether or not the appeal will be rendered nugatory depends on whether or not what is sought to be stayed, if allowed to happen, is reversible and, if not reversible, whether damages will reasonably compensate the party aggrieved.
 12. The only attempt by the applicants to demonstrate substantial loss is by averring that the respondents were likely to interfere with the titles and or alienate the land. See *Charles Wahome Gethi -vs- Angela Wairimu Gethi [2008] eKLR*. In *Machira T/A Machira & Co. Associates -vs- East African Standard (No. 2) [2002] KLR 63*, the court said a party must prove specific details and particulars, and where no satisfactory pecuniary or tangible loss is shown, the court will not grant a stay.
 13. As to security, the court in *Arun C. Sharma -vs- Ashana Raikundalia T/A Raikundalia & Co. Advocates & Others (2014) eKLR*, observed that the purpose of security is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant and that it is not aimed at punishing the judgment debtor. In *Equity Bank Ltd -vs- Taiga Co. Ltd [2006] eKLR*, the court said that of even more significant impact is where an applicant has not offered security at all. Other than alleging that the applicants are ready to abide by any terms and conditions to be imposed by the court, yet they have not offered any security or expressed willingness and capacity to provide any, which is commensurate to the costs or the decree.
 14. Applying the foregoing case law, there is no dispute that the legal duty is on the applicants to prove the allegation that their appeal will be rendered nugatory. See NIC [*Bank Ltd -vs- Aquinas Francis Wasike & Another C.A No. 238 of 2005*](#). Security for due realization of the decree must be one to serve the purpose. It has to be offered and must be sufficient, as held in *Antoine Ndiaye -vs- African Virtual University [2015] (KEHC) 6783 [KLR]*. The court has to balance the two competing rights to an appellant and also the decree holder as held in *Gianfranco Manenthi & Another -vs- Africa Merchant Assurance Co. Ltd [2019] KEHC 7586 [KLR]*. The sole question is whether it is in the interest of justice to order a stay.
 15. In my considered view, I find the applicants have failed to meet the threshold of stay of execution. More importantly, there is no draft memorandum of appeal in which to assess if the intended appeal raises arguable points for consideration before the Court of Appeal.
 16. The upshot is that the application dated 25/10/2024 is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 26TH DAY OF FEBRUARY 2025.

In the presence of:

Court Assistant - Chemutai

Kariuki Alois for Barongo for the Plaintiffs/Applicants present

Songole for the Defendant/Respondent present

HON. C.K. NZILI

JUDGE, ELC KITALE.

