



County Government of Kisii v Nyakeyo (Suing on Behalf of Samuel Nyakeyo Ayega) (Environment and Land Appeal E028 of 2024) [2025] KEELC 869 (KLR) (25 February 2025) (Ruling)

Neutral citation: [2025] KEELC 869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND APPEAL E028 OF 2024**

M SILA, J

FEBRUARY 25, 2025

BETWEEN

COUNTY GOVERNMENT OF KISII APPELLANT

AND

LUCY OKENYURI NYAKEYO RESPONDENT

SUING ON BEHALF OF SAMUEL NYAKEYO AYEGA

RULING

(Application for stay pending appeal; monetary decree awarded to the respondent; applicant being a County Government; application allowed; court not persuaded to order deposit of money as this can be factored in a subsequent budget if the appeal fails)

1. What is before me is an application dated 29 July 2024 filed by the appellant. The application seeks stay pending appeal.
2. In a nutshell the respondent had filed a suit claiming that the appellant had demolished structures belonging to her father, whom she represented, in the land parcel Wanjare/Bomorenda/1411 in order to expand the Kisii-Suneka road, yet they had not been compensated. The case was resisted culminating in a judgment delivered on 25 June 2024. In the judgment, the trial court found that the respondent was entitled to compensation and gave an award in the sum of Kshs. 10, 100,000/=. Aggrieved, the appellant filed this appeal and followed it up with this application for stay of execution pending appeal. Some time was taken from the time the application was filed as the parties were exploring the possibility of settlement until it finally emerged that they could not agree and the court therefore had to make a decision on the application.



3. The principles for grant of stay pending appeal before this court are set out in Order 42 Rule 6 (2) which provides as follows:

“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”.

4. Thus, the court would grant stay, where the application has been made without unreasonable delay; and substantial loss may occur if stay is not granted; and finally, the applicant provides such security as the court may order.

5. I have looked at the reply and the respondent has not mentioned her capacity to make good the amount in the event that she is paid the same. I am therefore satisfied that the applicant stands to suffer substantial loss. The application has also not been made with delay. The last issue is security. The applicant is the County Government of Kisii. I would think that if she fails on appeal, she can make arrangements in her budget for settlement of the decretal sum. I do not think that it is necessary in the circumstances to insist that the decretal sum be deposited. Neither am I persuaded to order that half of it be paid as suggested by the respondent.

6. In essence, I allow the application. There will be an order of stay of execution of the decree appealed against, which is the decree in the suit Kisii CMCC/ELC No. 35 of 2021 pending the hearing and determination of this appeal. The costs of the application will abide the costs of the appeal.

7. It is so ordered.

DATED AND DELIVERED THIS 25 DAY OF FEBRUARY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:

Ms. Githinji for the applicant

Mr. Mokaya for the respondent

Court Assistant: Michael Oyuko

