



**Lokopu v Logiel (Environment and Land Appeal 1 of 2024)  
[2025] KEELC 655 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 655 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT LODWAR  
ENVIRONMENT AND LAND APPEAL 1 OF 2024  
CK NZILI, J  
FEBRUARY 19, 2025**

**BETWEEN**

**DAVID IMURON LOKOPU ..... APPELLANT**

**AND**

**JOHN KAITO LOGIEL ..... RESPONDENT**

**RULING**

1. By an application dated 29/11/2024, the court is asked to stay the execution of a judgment in Lodwar Civil Case MCCC 2B of 2013 pending the hearing and determination of this appeal. The grounds are set out on the face of the application and in a supporting affidavit of David Imuron Lokopu dated 29/11/2024.
2. The applicant depones that the outcome of the judgment was an eviction order against him from a land he has lived on for 40 years with his entire family and does not have an alternative home or land to move to inside and outside Lodwar.
3. The applicant avers that his deceased children were also buried on the land, and if execution occurs, his home will be demolished, the said graveyard exhumed, destroyed, or desecrated by the respondent. Further, the applicant states that he is of advanced age and that his family will be rendered homeless and destitute, and the substratum of the appeal rendered nugatory. Equally, the applicant avers that he has an arguable appeal with chances of success, which ought to be heard on merit.
4. The application came up for interpartes on 13/12/2024. Learned counsel for the respondent, Mr. Muyesu, urged the court to find the application incompetent for non-compliance with Order 42 Rule 6 of the Civil Procedure Rules, for what is before the court is a Notice of Appeal, which is invalid.
5. From the court record and the Case Tracking System (C.T.S), it appears that apart from the Notice of Appeal, which I find irregular, the applicant uploaded a Memorandum of Appeal dated 29/11/2024 on 29/11/2024 at 16.53 hours. So, there is already a pending appeal before this court.



6. A party seeking a stay of execution must apply on time without unreasonable delay. Secondly, he has to demonstrate substantial loss or damage. Thirdly, the party must offer security for the due realization of the decree, should the appeal not succeed.
7. The judgment was delivered on 29/10/2024. This application was filed on 29/11/2024. I find the delay of 30 days or so reasonable. See Cecilia Wanja Waweru -vs.- Jackson Wainaina Muiruri & Another [2014] eKLR. On substantial loss, the same has to be demonstrated through tangible and cogent evidence as held in James Wangalwa & Another -vs- Agnes Naliaka Cheseto [2018] eKLR. Substantial loss is what is to be prevented from happening. An appeal could be rendered nugatory if what is sought to be forestalled would not be reversed and can only be recovered in significant absence or cannot be adequately compensated. See Teachers Service Commission & Another -vs- Mutisya Civil Application No. E091 of 20203 [2024] KECA 8 [KLR] (9<sup>th</sup> February, 2024) (Ruling).
8. In this application, the applicant has averred that he is in occupation of the land where his homestead is and lives thereon with his family. He says that he risks eviction and the appeal may be rendered nugatory. Further, he says the substratum of the appeal will dissipate if his homestead is demolished and rendered homeless or destitute. He urges the court to preserve the status quo because such a loss would render the appeal nugatory.
9. Substantial loss refers to any loss, great or small, that is actual, worthy, or valuable. See Tropical Commodities Supplies Ltd & Others -vs.- International Credit Bank Ltd (In Liquidation) (2004) 2 EA 331 and Mukuma -vs- Abuoga [1988] eKLR 645. Eviction from the suitland, in my view, especially where there is no alternative home or land, would amount to substantial loss.
10. The upshot is that I find the application merited. There will be a stay of execution of the lower court decree for a period of 12 months. The applicant should deposit security of Kshs.30,000/= with the court within 21 days from the date hereof; otherwise, the stay orders shall lapse.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 19<sup>TH</sup> DAY OF FEBRUARY 2025.**

In the presence of:

Court Assistant - Chemutai

Muyesu for the Respondent present

Applicant John Koito.

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

