



**Kemboi v Kimitai (Environment and Land Appeal E006 of 2024)
[2025] KEELC 622 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E006 OF 2024
A OMBWAYO, J
FEBRUARY 18, 2025**

BETWEEN

BERNARD KIPSANG KEMBOI JUDGMENT DEBTOR

AND

VERONICAH KIMOI KIMITEI RESPONDENT

RULING

1. Bernard Kipsang Kemboi the judgment debtor/applicant has come to this court seeking orders that there be a stay of execution of the judgment dated 31st October 2024, restraining the Decree Holder/ Respondent whether by himself, his agents, servants or any other person whomsoever from evicting, demolishing structures, erecting any structure or otherwise interfering with the Judgment Debtor quite peaceful, actual and exclusive possession if that parcel of land known as Plot No. 1266 at OL Jorai Phase 11 Settlement Scheme, together with all consequential orders pending the hearing and determination of this application inter-parties.
2. Pending the hearing and determination of this application of the appeal there be a stay of execution of the judgment dated 31st October 2024, restraining the Decree Holder/ Respondent whether by himself, his agents, servants or any other person whomsoever from evicting,, demolishing structures, erecting any structure or otherwise interfering with the Judgment Debtor quite peaceful, actual and exclusive possession if that parcel of land known as Plot No. 1266 at OL Jorai Phase II Settlement Scheme, together with all consequential orders and all consequential orders pending the hearing and determination of the Appeal.
3. The application is based on grounds that the Respondent instituted the suit referenced as ELC Case No. 261 of 2018 which the lower court, in its judgment dated 12th January 2024, ruled in favor of the Respondent and ordered the eviction of the Applicant from Plot No. 1266 at OL Jorai Phase 11



Settlement Scheme The judgment was upheld upon appeal to this Honorable Court on 31st October 2024.

4. Dissatisfied with the decision of this court, the Applicant intends to lodge a second appeal to the Court of Appeal. The issues raised in the intended appeal are substantial; particularly concerning the Applicant's right to the suit property, which is his family's home.
5. The suit property is the Applicant's only residence Execution of the judgment will lead to eviction, resulting in homelessness for the Applicant and his dependents, an outcome which would be irreparable. The intended appeal raises valid and arguable grounds, warranting the preservation of the current status quo until the matter is fully resolved on appeal. Granting a stay will not prejudice the Respondent, who remains in possession of other remedies should the appeal fail.
6. The Applicant's constitutional right to a fair hearing and protection from unlawful deprivation of property require that his appeal be effectively heard. Denying the stay will negate these rights and undermine access to justice.
7. The orders sought are essential to safeguard the Applicant's right to fair hearing, property ownership, and family welfare.

The supporting affidavit reiterates the grounds of the application.

8. The applications is opposed by the respondent who states through his advocate that she issued a demand as a matter of course. That the demand notice is not anchored in law and therefore the court has no jurisdiction to entertain the application.
9. In the grounds of opposition filed on 20th November 2024 the respondent contends that the applicant does not raise any tenable issue and that the application does not establish a prima facie case with any chances of success. Moreover, that the applicant has not pledged any security and that the court is functus officio.
10. I have considered the application and the submissions on record and do find that judgment was made on 31st October 2024 whereas the application was made on 5th November 2024. The application has met the first test in grant of stay of execution pending appeal. That is the application must be made timeously without unreasonable delay.
11. Secondly, the applicant has demonstrated that he is likely to suffer substantial loss of stay is not granted as he is likely to be evicted from a place he calls home and that he will be rendered homeless. I do find that the application is merited hence I do grant a stay of execution for a period of 180 days only. The applicant to deposit an amount of Ksh 200,000 as security for costs within the next 30 days in a joint account in a reputable bank to be opened in the names of their lawyers. The costs of the application be in the appeal. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 18TH DAY OF FEBRUARY 2025.

A O OMBWAYO

JUDGE

