



**Mosonik v Changwony (Environment & Land Case 25 of 2015)
[2025] KEELC 2970 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2970 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 25 OF 2015**

**A OMBWAYO, J
MARCH 28, 2025**

BETWEEN

JUDITH CHERONO MOSONIK PLAINTIFF

AND

DICKSON KIPKEMBOI CHANGWONY DEFENDANT

RULING

1. Dickson Kipkemboi Kiplagat Changwony and Joyce Jepkemboi Toroitich, the judgment debtors herein had come to this court vide application dated 7th February 2025 seeking an order of status quo on the suit parcel of land and a stay of execution of the judgment delivered on 30th January 2025 pending the hearing and determination of the intended appeal lodged by the defendant applicant before the court of Appeal in Nakuru. The application is supported by the affidavit of the defendant. The application is opposed by the plaintiffs decree holder who argue that the application does not satisfy the requirement of order 42 Rule 6 of the Civil Procedure Rules 2010.
2. I have considered the application in totality the rival submissions and Order 42 Rule 6 (2) of the Civil Procedure Rules 2010 that guides the court in such applications.
3. There is an ample judicial authority on this issue. The case of Kenya Shell Limited vs. Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) KAR 1018 has been amplified where the Court of Appeal stated that:

“It is usually a good rule to see if Order 41 Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdiction for granting stay”



4. And substantial loss in the sense of Order 42 rule 6 has been described; see the following rendition in a work of *Ogola J in Tropical Commodity Suppliers Ltd* (Supra) that:-

“...Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal...”

5. And also in the case of Bungoma Hc Misc Application No 42 of 2011 *James Wangalwa & Another vs. Agnes Naliaka Cheseto* that:

“The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail...”

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6. I do find that the application has been brought without unreasonable delay. On substantial loss this court is satisfied that substantial loss will result to the applicant if they vacate the premises and the title to the suit property is revoked because the procedure of reversal will be painstaking. This court is inclined to maintain the status quo in the matter pending appeal. On security for costs. I do order that the applicants deposit security of Kshs200,000, in a joint interest earning account in the names of the two firm of the advocates on record. To be opened in a reputable bank in Kenya. Costs of the application the appeal.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

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