



**Waqo v Chure (Environment and Land Appeal E026 of 2024)
[2024] KEELC 14043 (KLR) (11 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14043 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL E026 OF 2024**

CK NZILI, J

DECEMBER 11, 2024

BETWEEN

ROB HIRBO WAQO PLAINTIFF

AND

ALI WAQO CHURE DEFENDANT

RULING

1. The court is asked to grant a stay of execution of a judgment and decree issued on 25.10.2024 by the lower court pending the hearing and determination of the appeal. The application is premised on the grounds on the face of it and in a supporting affidavit of Rob Hirbo sworn on 5.11.2024. The same is opposed by an affidavit sworn by Ali Waqo Chure on 12.11.2024 on the basis that the property claimed by the applicant as Plot No. 278B Heilu Manyatta Ward, measuring 200 ft by 200 ft, was totally different from Plot No. 556 Heilu, measuring 100 ft by 50ft, which he has occupied since 2010, as was confirmed by the trial court.
2. The respondent averred that the applicant had no proprietary rights over his land, which this court could protect; hence, the application lacked merits was misconceived and an abuse of the court process.
3. A party seeking stay orders pending appeal has to demonstrate substantial loss, offer security for the due performance should the appeal not succeed, apply without inordinate delay, and lastly, establish that it is in the interest of justice to grant the orders sought.
4. The application for stay was filed on 8.11.2024 after the judgment was delivered on 25.10.2024. My finding is that there was no inordinate delay. See Cecilia Wanja Waweru vs Jackson Wainaina Muiruri & another (2014) eKLR.
5. Substantial loss is what has to be prevented from happening that is likely to change the substratum of appeal. It has to be demonstrated by clear and cogent evidence since an impending execution does not amount to substantial loss. See James Wangalwa vs Agnes Naliaka Cheseto (2012) eKLR.



6. An order of stay presupposes a positive order which either has not been complied with or has been partly complied with. It is an interim order to delay the performance of the positive obligations that are set out in a decree, as a result of a judgment. See *Co-operative Bank of (K) Ltd vs Banking Insurance & Finance Union (K)* (2015) eKLR.
7. A negative order is not capable of being stayed. See *Kanwal Sarjit Singh Dhiman vs Keshavji Jivraj Shah* (2008) eKLR. Security serves the purpose of guaranteeing due performance of the decree, which may ultimately be binding on the applicant. In *Arun C. Sharma vs Ashana Raikundalia t/a Raikundalia & Co. Advocates & others* (2014) eKLR, the court said that its purpose is not to punish the applicant, only that in a civil suit, a judgment is like a debt owed to the judgment creditor by the judgment debtor.
8. In considering whether to grant a stay, a court looks into exceptional circumstances that can sway its discretion in a particular manner, after weighing or balancing the scales of justice to ensure none of the parties with equally competing rights is prejudiced. See *Samvir Trustee Bank Ltd vs Guardian Bank Ltd* (2007) eKLR.
9. In this application, there is no demonstration of the alleged substantial and irreparable loss, damage and prejudice likely to occur to the subject matter or which will render the appeal nugatory.
10. It is not enough to allege loss, damage, or prejudice without showing the vitiating factors or reasons why in the absence of stay the substratum of the appeal shall change drastically.
11. The applicant has not given any evidence that the suit land is under his occupation. He has not demonstrated the nature of its status and or threats and how it is in danger of changing its essential core or character. The applicant has not attached photographs, valuation reports, or assessment reports showing the value, locality, and danger posed to the substratum of the appeal. Equally, the applicant has not controverted the averments by the respondent that the two plots in dispute are distinct, separate and independently occupied.
12. The applicant has equally failed to offer specific the nature of security that he is willing to place before the court. His suit was dismissed, while the counterclaim was allowed. A decree capable of being executed against him has not been attached.
13. The application lacks merits. It is dismissed with costs. Lower court file to be availed. Mention on 10.2.2025.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
THIS 11TH DECEMBER, 2024**

In presence of

C.A Kananu

Odoyo for respondent

HON. C K NZILI

JUDGE

