



**Center for Litigation on Environment and Governance (CLEG) v Tasir &
7 others; Odero (Interested Party) (Environment and Land Constitutional
Petition E001 of 2024) [2025] KEELC 3021 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3021 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E001 OF 2024
YM ANGIMA, J
MARCH 27, 2025**

BETWEEN

**CENTER FOR LITIGATION ON ENVIRONMENT AND GOVERNANCE
(CLEG) PETITIONER**

AND

**HAJI MBARAK TASIR 1ST RESPONDENT
COUNTY GOVERNMENT OF MOMBASA 2ND RESPONDENT
NATIONAL CONSTRUCTION AUTHORITY 3RD RESPONDENT
NATIONAL BUILDING INSPECTORATE 4TH RESPONDENT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 5TH
RESPONDENT
KENYA URBAN ROADS AUTHORITY 6TH RESPONDENT
ENGINEERS BOARD OF KENYA 7TH RESPONDENT
ATTORNEY GENERAL 8TH RESPONDENT**

AND

ENG TOM OCHANDA ODERO INTERESTED PARTY

RULING

A. Introduction

1. By a judgment dated and delivered on 11.12.2024 the court allowed the petitioner’s claim in the following terms;



- a. The 1st respondent has violated Article 42 of the Constitution 2010 that guarantees right to a clean and healthy environment.
- b. The building structure being undertaken by the 1st respondent on Plot No. 1417 Mwembegeza scheme in Mombasa County is structurally defective and unsafe for human habitation.
- c. The 1st respondent to stop with immediate effect all construction and all tenants/occupants in the building on Plot No. 1417 Mwembegeza scheme to vacate as per the notice issued by the County Government of Mombasa dated 4th April 2024.
- d. The 2nd respondent to ensure enforcement of the said notice and this court's orders and file a report to this court within the next 30 (thirty) days from the date of this judgement.
- e. That the cost of this petition to be borne by the 1st respondent.

B. 1st Respondent's Application

2. Vide a notice of motion dated 16.12.2024 filed pursuant to Section 3A of the Civil Procedure Act (Cap 21), Order 42 Rule 6 of the Civil Procedure Rules and all enabling provisions of the law, the 1st respondent sought a stay of execution of the judgment and decree dated 11.12.2024 pending the hearing and determination of an intended appeal to the Court of Appeal.
3. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn on 16.12.2024 by 1st respondent. He contended that he had a good and arguable appeal; that his intended appeal may be rendered nugatory; and that the balance of convenience lay in his favour since the court had made a draconian order for demolition of his building.

C. Petitioner's Response

4. The petitioner filed grounds of opposition dated 15.01.2025 in opposition to the application raising the following grounds;
 - a. That there was no order for demolition of the building in issue.
 - b. That the building posed a great danger to the public as it had been declared unfit for human habitation.
 - c. If the order of stay were granted it would encourage unquantified persons and quacks to undertake construction projects.
 - d. The 1st respondent had failed to comply with an order made on 13.06.2024 requiring tenants to locate the building.

D. 2nd Respondent's Response

5. The 2nd respondent filed grounds of objection dated 15.01.2025 raising the following grounds;
 - a. The Application seeks to circumvent the Orders of the Court rendered in the Judgement delivered on 11.12.2024 specifically Order No. 2 and 3 which state:
 - i. The building structure being undertaken by the 1st Respondent on plot no. 1417 Mwembegeza is structurally defective and unsafe for human habitation.



- ii. The 1st respondent to stop with immediate effect all construction and all tenants/occupants in the building on Plot No. 1417 Mwembelegeza scheme to vacate as per the Notice issued by the County Government of Mombasa dated 4th April, 2024.
- b. The Application is an attempt to use the Justice system to protect private interest in total disregard of the larger public interest thus endangering the lives of members of the public.
- c. The Application is aimed at protecting a building that has been declared a hazard to the members of the public due to structural defects.
- d. The Orders sought will encourage poor construction and failure to observe physical planning and land use Act and all other laws pertaining to structural health (integrity, stability and strength) of buildings.
- e. The Application is made in bad faith contrary to the requirement that he who comes to equity must come with clean hands.
- f. The Application is an abuse of the Court process and should be dismissed with costs.

E. Directions on Submissions

6. When the application was listed for inter partes hearing it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the 1st respondent filed his submissions dated 21.01.2025 whereas the 2nd respondent filed submission dated 12.03.2025. The Attorney General filed submissions dated 20.01.2025 on behalf for the 4th, 6th and 8th respondents. On its part, the petitioner informed the court that it shall rely entirely on its grounds of opposition.

F. Issues for determination

7. The court has perused the notice of motion dated 16.12.2024, the grounds of opposition in response thereto as well as the material on record. The court is of the view that that key issues for Determination are the following;
 - a. Whether the 1st respondent has made out a case for the grant of stay pending appeal.
 - b. Who shall bear costs of the application.

G. Analysis and Determination

(a) Whether the 1st respondent has made out a case for the grant of stay pending appeal

8. The court has considered the material and submissions on record on this issue. Whereas the 1st respondent submitted that he had satisfied the requirements for the grant of a stay the petitioner and the respondents contended otherwise. The 1st respondent submitted that his intended appeal may be rendered nugatory if the building in issue is demolished before the appeal is heard and determined.
9. The respondents submitted that there was no demolition order issued by the court and that what was ordered was for the building in issue to be vacated and the enforcement notice of the 2nd respondent to be enforced for the safety of the occupants of the building and the general public. It was further submitted that there was no evidence of any substantial loss being suffered by the 1st respondent and that public safety ought to be taken into account in the circumstances.



10. The principles to be considered in an application for stay pending appeal are stipulated in Order 42 Rule 6 (2) of the [Civil Procedure Rules](#) 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.”

11. The 1st respondent contended that his building was at risk of being demolished in the absence of a stay order and that his intended appeal might be rendered nugatory. As indicated in paragraph 1 hereof, there was no order for demolition of the building in issue. The judgment only made certain declarations against the 1st respondent and ordered stoppage of further construction and evacuation of the occupants.

12. If the 1st respondent were to become ultimately successful in his appeal, he may still resume construction and invite tenants back to the building. The court is far from satisfied that the 1st respondent’s appeal shall be rendered nugatory unless the stay sought is granted.

13. The court is further of the view that given the nature of the matters in controversy and the potential danger posed to the occupants of the building and the general public, there is no evidence of substantial loss which may be suffered by the 1st respondent in the absence of a stay. The court is obligated to apply the precautionary principle and prevent any danger which may arise from the continued construction and occupation of the subject building. As a result, the court is not satisfied that the 1st respondent has satisfied the principles for the grant of an order of stay pending appeal.

(b) Who shall bear costs of the application

14. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the [Civil Procedure Act](#) (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a consequence, the 1st respondent shall bear costs of the application.

H. Conclusion and Disposal Orders

15. The upshot of the foregoing is that the court finds no merit in the 1st respondent’s application for stay pending appeal. As a result, the court makes the following orders for disposal of the application:

- a. The notice of motion dated 16.12.2024 is hereby dismissed on its entirety.
- b. The 1st respondent shall pay the petitioner’s 2nd, 4th, 6th and 8th respondents’ cost of the application.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 27TH DAY OF MARCH 2025.

Y. M. ANGIMA



JUDGE

In the presence of:-

Court assistant Gillian

Mr. Ainea Ragen for the petitioner

Mr. Magola for 1st respondent

No appearance for 2, 3, 5, 7 respondents

Mr. Kiprono holding brief for Mwanzumba for 4, 6 and 8th respondents

