



**Korio & another v Korinko & 6 others (Petition E005 of 2024)  
[2025] KEELC 2866 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2866 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
PETITION E005 OF 2024  
MN MWANYALE, J  
MARCH 27, 2025**

**BETWEEN**

**JAMES LESHAN KORIO ..... 1<sup>ST</sup> PETITIONER  
JOAB LEPOSE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MOSES L KORINKO ..... 1<sup>ST</sup> RESPONDENT  
MUJAID KUROMONGI ..... 2<sup>ND</sup> RESPONDENT  
SIMEON TIEPOON ..... 3<sup>RD</sup> RESPONDENT  
DAVID OLE NTUKAI ..... 4<sup>TH</sup> RESPONDENT  
LAND ADJUDICATION & SETTLEMENT OFFICER, TRANSMARA SUB-  
COUNTIES ..... 5<sup>TH</sup> RESPONDENT  
THE LAND REGISTRAR, TRANSMARA SUB-COUNTIES . 6<sup>TH</sup> RESPONDENT  
HON ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. Coming up for determination is the Notice of Motion application dated 13.02.2025 seeking stay of execution of the orders of the ruling dated 29<sup>th</sup> January 2025 and/or further proceeding therefrom pending the hearing and determination of the substantive appeal at the Court of Appeal; and to arrest compliance with Order 11 of the Civil Procedure Rules 2011 slated for 5<sup>th</sup> day of March, 2025.
2. In support of the application are the grounds interalia;



- i. That Applicants have filed a Notice of Appeal against the ruling dated 29<sup>th</sup> January 2025 which appeal has an overwhelming chance of success, hence the need to stay the execution and the hearing of the Res-judicata application.
  - ii. That the applicants are ready and willing to abide by any order for purposes of security, hence the application ought to be allowed.
3. The application is supported by the affidavit of James Leshan Korio who deposes the grounds in support of the application and has annexed a copy of the Ruling as well as the Notice of Appeal; and a draft Memorandum of Appeal as well.
  - i. That the requirements of Order 42 Rule 6 provides for issues of security, which ought to be reasonable so as not to bar the Applicants from accessing justice through an appeal.
  - ii. Orders in the present application are enforceable and available to the applicant.
4. Although the application was not certified as urgent when it came up ex-parte, the court directed that service of the application for directions on 13.02.2025, and on 04.03.2025 when the matter came up, directions were issued for service of the applications and responses to be filed within time frame.
5. The 1<sup>st</sup> Applicant acting in person confirmed having filed submissions in respect of the application, and Mr. Onyango learned Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Respondents confirmed service of the submissions and not the Application, upon which the court directed re-service of the application and replies to be filed as well as submissions and Ruling reserved for 27.03.2025.
6. Upon perusal of the court file the 1<sup>st</sup> to 4<sup>th</sup> Respondents have not filed their Responses nor submissions but their Advocate filed an application to cease acting which the court directed that it be comes up for directions after the delivery of this Ruling.
7. As it is, the application dated 13.02.2025 is not opposed but the court shall consider it on its merits.
8. I have considered the application and the submissions filed by the Applicant and the only issue is whether the application is merited.
9. Indeed on 29.01.2025 the court dismissed an application that had been filed by the petitioner/ applicant.
10. It is in respect of that dismissal that a Notice of Appeal was filed pursuant to leave granted by court and provoked the current application for stay of execution and stay of proceedings pending determination of the Appeal before to the Court of Appeal.
11. Undoubtedly, a dismissal is a negative order, can a stay of execution issue in respect of a negative order?
12. The courts have had a chance to determine this issue and the Court of Appeal in its decision in the case of *Githundu v Waitbaka* (Civil Application) E024 of 2021 [2022] KELR – at paragraph to the court held interalia

“Additionally, even if he had the requisite jurisdiction, this court has said time without number that stay orders cannot issue in respect of negative orders, where the court has not ordered any of the parties to perform any task”.
13. In the Ruling dated 29.01.2025 being a dismissal order, the same cannot result in any enforceable orders and the application for stay of execution is hereby dismissed.



14. On stay of proceedings, stay of proceedings are issued on the principles enumerated in the decision in *Kenya Wildlife Service v James Mutembei* [2019] eKLR where the court stated; -

“stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impugnes on right to access justice, right to be heard without delay and overall, the right to fair trial. Therefore, the test for stay of proceedings is high and stringent. “

15. From the application filed and the affidavits, the Applicant has not met the stringent threshold set out and the court believes this is not an application fit for stay of proceedings.

16. The upshot is that the application is hereby dismissed with costs in the cause.

**DATED AT KILGORIS THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia

Mr. Leshan acting in person together with Job Leboso

Ms. Osebe for 5<sup>th</sup> and 6<sup>th</sup> Respondent

Mr. Mulisa for 1<sup>st</sup> to 4<sup>th</sup> Respondent

