



**Samoei v National Housing Corporation & another (Civil Suit
E008 of 2020) [2025] KEHC 11716 (KLR) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E008 OF 2020
RN NYAKUNDI, J
AUGUST 4, 2025**

BETWEEN

WILLIAM CHERUIYOT SAMOEI PLAINTIFF

AND

NATIONAL HOUSING CORPORATION 1ST DEFENDANT

TIMON KIPKOECH TOO 2ND DEFENDANT

RULING

1. What is pending before this court for determination is a Notice of Motion Application dated 10th July 2025 where the Applicant is seeking the following orders:
 - a. Spent
 - b. This Honorable Court be pleased to grant a temporary order of stay of execution of the judgment delivered on 15.11.2024 and all consequential orders arising therefrom pending the hearing and determination of this application inter partes.
 - c. This Honorable Court be pleased to grant an order of stay of execution of the judgment delivered on 15.11.2024 and all consequential orders arising therefrom pending the hearing and determination of the appeal filed vide Eldoret Court of Appeal Civil Appeal No. E048 of 2025: National Housing Corporation Vs. William Cheruiyot Samoei and Timon Kipkoech Too.
 - d. The costs of this application be provided for.
2. The Application is made on the following grounds among others;
 - a. That Judgment in this matter was delivered on 15.11.2024 in favor of the Plaintiff/Respondent as against the 1st Defendant/Applicant in the following terms;



- i. A declaration is hereby made that the principles underlying the in duplum rule apply to loans advanced by the National Housing Corporation, such that the total interest revocable shall not exceed the principal amount of the loan.
 - ii. A declaration is hereby made that the Plaintiff, having paid Kshs. 1,500,000/= against the principal loan of Kshs. 500,000/=:, has satisfied his obligations as guarantor of the loan advanced to the 2nd Defendant, the said payment being sufficient to cover both the principal and legitimate interest.
 - iii. A mandatory order is hereby issued directing the 1st Defendant to within 30 days of accounts reflecting interest capped at Kshs. 500,000/= (being an amount equal to the principal sum); credit all payments made by the Plaintiff totaling principal plus capped interest) and issue a confirmation of full settlement of the loan within 14 days thereafter.
 - iv. A permanent injunction is hereby issued restraining the 1st Defendant whether by itself, its servants, agents, or otherwise howsoever from; demanding any for sale, selling, alienating, or in any way dealing with the Plaintiff's land parcel action against the Plaintiff based on the subject loan.
 - v. The 1st Defendant shall, within 60 days of this judgement, discharge the charge registered against the Plaintiff's land parcel No. Nandi/Kiminda/1707 and return all original documents relating to the said property to the Plaintiff.
 - vi. Given the nature of this case, each party shall bear their own costs.
- b. That the 1st Defendant/Applicant being aggrieved by the said judgment, filed an appeal vide Eldoret Court of Appeal Civil Appeal No. E048 of 2025 against the whole Judgment delivered on 25.11.2025 by Hon. Justice R. Nyakundi.
 - c. That the 30 days' period within which the 1st Defendant/Applicant is required to comply with the Court orders issued vide the judgement delivered on 15.11.2024 has already lapsed and the 1st Defendant/Applicant is apprehensive that the Plaintiff/Respondent may commence execution and/or contempt proceedings against them any time from now to their detriment.
 - d. That the 1st Defendant/Applicant will suffer substantial loss and damage if the orders sought herein are not granted and further that the appeal will be rendered nugatory.
 - e. That the appeal filed raises triable issues with high chances of success.
 - f. That the Plaintiff/Respondent will not be prejudiced in any way if the orders sought herein are granted as prayed.
 - g. That it is in the interest of Justice that the execution of Judgment delivered on 15.11.2025 is stayed to pave way for the hearing and determination of the appeal filed at the Court of Appeal.
 - h. That the 1st Defendant/Applicant is willing to abide by the terms of the Court in allowing this application.
3. The Application is supported by the annexed affidavit dated 10th July 2025 sworn by Criselda J. Kwambai who deponed as follows;
 - a. That I am a senior Legal officer at National Housing Corporation, the 1st Defendant/Applicant herein.



- b. That Judgment in this matter was delivered on 15.11.2024 in favor of the Plaintiff/Respondent as against the 1st Defendant/Applicant in the following terms:
- a. A declaration is hereby made that the principles underlying the in duplum rule apply to loans advanced by the National Housing Corporation, such that the total interest revocable shall not exceed the principal amount of the loan.
 - b. A declaration is hereby made that the Plaintiff, having paid Kshs. 1,500,000/= against the principal loan of Kshs. 500,000/=, has satisfied his obligations as guarantor of the loan advanced to the 2nd Defendant, the said payment being sufficient to cover both the principal and legitimate interest.
 - c. A mandatory order is hereby issued directing the 1st Defendant to within 30 days of this judgement, prepare and provide to the Plaintiff a fresh statement of accounts reflecting interest capped at Kshs. 500,000/= (being an amount equal to the principal sum); credit all payments made by the Plaintiff totaling to Kshs. 1,500,000/= against the capped loan of Kshs. 1,000,000/= (being the principal plus capped interest) and issue a confirmation of full settlement of the loan within 14 days thereafter.
 - d. A permanent injunction is hereby issued restraining the 1st Defendant whether by itself, its servants, agents, or otherwise howsoever from demanding any further payments from the Plaintiff in respect of the subject loan; advertising for sale, selling, alienating, or in any way dealing with the Plaintiff's land parcel No. Nandi/Kiminda/1707 on account of the subject loan taking any adverse action against the Plaintiff based on the subject loan.
 - e. The 1st Defendant shall, within 60 days of this judgement, discharge the charge registered against the Plaintiff's land parcel No. Nandi/Kiminda/1707 and return all original documents relating to the said property to the Plaintiff.
 - f. Given the nature of this case, each party shall bear their own costs.
- c. That the 1st Defendant/Applicant being aggrieved by the said judgment, filed an appeal vide Eldoret Court of Appeal Civil Appeal No. E048 of 2025 against the whole Judgment delivered on 25.11.2025 by Hon. Justice R. Nyakundi.
- d. That the 30 days' period within which the 1st Defendant/Applicant is required to comply with the Court orders issued vide the judgement delivered on 15.11.2024 has already lapsed and the 1st Defendant/Applicant is apprehensive that the Plaintiff/Respondent may commence execution and/or contempt proceedings against them any time from now to their detriment.
- e. That the 1st Defendant/Applicant will suffer substantial loss and damage if orders sought herein are not granted and further that the appeal will be rendered nugatory.
- f. That the appeal filed raises triable issues with high chances of success.
- g. That the Plaintiff/Respondent will not be prejudiced in any way if the orders sought herein are granted as prayed.
- h. That it is in the interest of Justice that the execution of Judgment delivered on 15.11.2025 is stayed to pave way for the hearing and determination of the appeal filed at the Court of Appeal.
- i. That the 1st Defendant/Applicant is willing to abide by the terms of the Court in allowing this application.



- j. That this application has been brought in good faith and without undue delay.
- k. That this Honorable court has powers to grant the prayers sought herein in the interest of justice and fairness.
- l. That I urge this Honorable court to exercise its discretion and allow the application filed herewith as prayed.

Analysis and Determination

- 4. This application was duly served upon the Respondents but the record no response had been filed.
- 5. The applicable provisions of the law on stay of execution are as stated in Order 42 Rule 6 of the Civil Procedure Rules 2010 which states as follows;
 - “(1) No appeal or second appeal shall operate as a stay of execution or proceeding under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) 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.”
- 6. The conditions to be fulfilled can therefore be summarized as follows;
 - a. That there is a sufficient cause for the grant of the order for stay of execution of the decree or order.
 - b. That the substantial loss may result to the applicant unless the order is made
 - c. That the application has been made without unreasonable delay
 - d. That security as this court orders for the due performance of such decree or order that is binding on the applicant has been given by the applicant
- 7. I take note that these principles were enunciated in *Butt Vs Rent Restriction Tribunal* [1979] where the Court of Appeal stated what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that: -
 - a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.



- b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
 - c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
 - d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.
8. In *Timber Manufacturers Ltd v Joseph Kiarie Mbugua & Another* No. 159 of 2005 (Tunoi, Githinji and Waki, JJA on 15th July 2005) held as follows:
- (a) for the court to exercise a discretion in favour of the applicant in an application for stay pending appeal, the applicant has to show, among other things, that the intended appeal is not frivolous, that it is arguable, and that, unless the order of stay of execution is granted, the intended appeal would be rendered nugatory. See also *Kenya Commercial Bank Ltd Vs Alloys Kayihura Kaven t/a Alloys Kaven and Co Bakery, Nairobi* Civil Application No. 296 of 2004 and *Penina Atieni & Another v Standard Chartered Bank Ltd & Another*, Kisumu High Court civil case No. 133 of 2002
9. Similarly, in *Nizaba International Trading Ltd & others Vs Habib Bank Ltd* Kisumu High Court civil case No. 53 of 2003, the Court had the following observations:
- a. In approaching an application for stay of execution pending appeal the court must bear in mind the fact that ordinarily the successful party should be allowed to enjoy the fruit of his success and the consequence of such application is a hindrance or an impediment to the enjoyment of such judgment.
 - b. In order that an unsuccessful party may succeed in obtaining such impediment or stay pending an appeal he must satisfy the court by an affidavit or otherwise that substantial loss may result to him unless a stay is granted
10. These are the principles upon which this court can exercise discretion to grant or decline stay of execution pending an appeal. In the case at bar, the applicant has satisfied the criteria among other things that the appeal is likely to be rendered nugatory unless an order of stay of execution is granted in favor of the applicant. In the resort, the application dated 10th July 2025 be and is hereby granted.

DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS THIS 4TH AUGUST 2025

.....

R. NYAKUNDI

JUDGE

info@omwengaadvocates.com

kairanabasenge.law@gmail.com

