



**Cheriro & another v Ronoh (Environment and Land Appeal
E021 of 2025) [2025] KEELC 4925 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4925 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E021 OF 2025**

A OMBWAYO, J

JULY 3, 2025

CASE NUMBER: ELCLA/E021/2025

**CITATION: AGNESS CHEPKOECH CHERIRO AND BENARD
KIBET SERON KIRUI VS DAVID KIPKORIR RONO**

BETWEEN

AGNES CHEPKOECH CHERIRO 1ST APPELLANT

BENARD KIBET SERON KIRUI 2ND APPELLANT

AND

DAVID KIPKORIR RONO RESPONDENT

RULING

1. This ruling is in respect of the Appellants Notice of Motion application dated 28th April, 2025 which sought the following orders;
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of the Applicants appeal, this Honourable court be pleased to issue an order of stay of execution of the Magistrate court in Molo Chief Magistrate’s Court ELC Case No. 60 of 2019 delivered on 14th April, 2025 and the consequential orders thereto.
 - d. That costs of the application be provided for.
2. The grounds on the face of the application are that judgement was delivered on 14th April, 2025 in favour of the Respondent. That being aggrieved by the said judgement, the Appellants filed the present appeal.



3. The application is premised on the affidavit of Agnes Chepkoech Cheroi sworn on 28th April, 2025. She stated that judgment on Molo CMELC No. 60 of 2019 was delivered on 14th April, 2025 in favour of the Respondent. She further stated that being dissatisfied with the judgment, she lodged an appeal against the whole decision which appeal has high chances of success. She is apprehensive that unless the orders sought are granted, the Respondent may commence execution which directed that their titles be cancelled. She added that their appeal would also be rendered nugatory occasioning them great prejudice.
4. She stated that they were yet to be supplied with the typed proceedings to enable them prepare the record of appeal. She also stated that they were willing to abide by any conditions as directed by the court for the grant of stay. She added that the Respondent will not suffer any prejudice if the application is allowed.
5. In conclusion, she stated that the application was filed without unreasonable delay. She urged the court to allow the application in the interest of justice.

Response

6. The Respondent did not file a response to the application.

Submissions

7. None of the parties filed their submissions.

Analysis and determination

8. The Court has considered the application and the main issue for determination is whether orders of stay of execution pending appeal should issue.
9. Order 42 Rule 6 (1)(2) of the Civil Procedure Rules provides as follows;

“

- “(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.

In *RWW V EKW* [2019] eKLR the court held as follows:

“...the purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”



10. For this court to grant an order of stay of execution, the Appellants must demonstrate that they filed the application under consideration without unreasonable delay, that they will suffer substantial loss if the orders sought are not granted and that they are willing to deposit security for costs. Notably, this court should endeavor to balance the interests of both the successful party in litigation so as not to unnecessarily bar them from enjoying the fruits of judgment and that of the Appellants whose appeal may succeed and be rendered nugatory if stay of execution is not granted.
11. On the issue of delay, a perusal of the court record shows that judgement in the matter was delivered on 14th April, 2025 and the Appellants filed a Memorandum of Appeal filed on 8th May, 2025. It is this court's view that the same was filed within a month hence the time was reasonable and without delay. It is noteworthy that the present application was filed on 8th May, 2025 translating to a period of less than a month from the date of judgment. This court is of the view that that the period does not amount to inordinate delay.
12. The Appellants have to also demonstrate that unless the court grants stay of execution orders pending appeal, they stood to suffer substantial loss. The 1st Appellant argues that the Respondent will proceed with the execution of the said judgement which ordered cancellation of their title and substitution with that of the Respondent. She stated that the end result would be that they will lose their property to the Respondent.
13. It is not in contention that the Respondent did not file any response controverting the Appellants claim.
14. On the issue of security of costs, the Appellants have expressed their willingness to offer security of costs.
15. In the case of Siegfried Busch vs MCSK [2013] eKLR, the court held as follows:

“ A superior court to which an application has been made must recognize and acknowledge the possibility that its decision for refusal to grant a stay of execution could be reversed on appeal. It would be best in those circumstances to preserve the status quo so as not to render an appeal nugatory. Even in doing so, the court should weigh this against the success of a litigant who should not be deprived of the fruits of his judgment...”
16. This court is of the view that grant of stay remains a discretionary order that must consider the fact that the court ought not to make a practice of denying a successful litigant the fruits of their judgment.
17. In the upshot, this court shall exercise its discretion and order of stay of execution of this court's judgement delivered on 14th April, 2025 in the following terms;
 - a. The Appellants shall compile, file and serve a record of appeal within 60 days and move the Court appropriately towards the finalization of this Appeal within 180 days from the date of this ruling.
18. In the event the Appellants fail to abide by any of the above stated condition within the fixed time lines there will be an automatic lapse of the stay of execution. Each party shall bear its own costs. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT**

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