



REPUBLIC OF KENYA



Kamungu & another v Mutwamburi & 13 others (Environment and Land Case 58 of 2020) [2025] KEELC 6439 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6439 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 58 OF 2020
JM ONYANGO, J
SEPTEMBER 23, 2025**

BETWEEN

KIRIKA KAMUNGU 1ST PLAINTIFF

JOHN NJOROGE KIRIKA 2ND PLAINTIFF

AND

MARGARET NJERI MUTWAMBURI 1ST DEFENDANT

GABRIEL INGACHA NJUGUNA 2ND DEFENDANT

GRACE NJERI NJUGUNA 3RD DEFENDANT

GEOFFREY GICHUHI NJOGU 4TH DEFENDANT

ALICE WAITHARA WANYOIKE 5TH DEFENDANT

PETER MURATHI KARIUKI 6TH DEFENDANT

BISHAR ALI 7TH DEFENDANT

GERALD GITEMA NJAU 8TH DEFENDANT

JAMES MUIGAI NJOROGE 9TH DEFENDANT

ROBERT MBUGUA HEHO 10TH DEFENDANT

SELINAH NJERI KAMAU 11TH DEFENDANT

JOSEPH KINGORI GATHUA 12TH DEFENDANT

MARGARET NJOKI NJOROGE 13TH DEFENDANT

SARAH NUNGARI NJUGUNA 14TH DEFENDANT



RULING

1. This Ruling pertains to a Notice of Motion dated 21st August, 2024, filed by the Applicants seeking an order of stay of execution of the Judgment and Decree of this court in favour of the Plaintiffs/ Respondents dated 5th August 2024, pending hearing and determination of the intended appeal at the Court of Appeal.
2. The Applicant filed the Application pursuant to the provisions of Order 42 Rule 6 (1) and (2), Order 51 Rule (1) of the [Civil Procedure Rules, 2010](#) and Sections 1A, 1B, 1C and 3A of the [Civil Procedure Act](#). The application is premised on the grounds listed on the face of the Notice of Motion and the Supporting Affidavit sworn by Gerald Gitema Njau, the 8th Defendant (Applicant) herein.
3. The 8th Applicant depones that this court delivered a Judgment on 5th August 2024 in favour of the Plaintiffs (Respondents). He further avers that the Applicants will lose their homes and, as a result, suffer substantial loss if the Respondents execute the impugned Judgment against them. He is apprehensive that if the Applicants' title deeds are cancelled pursuant to the Judgment, then the Respondents might transfer the suit properties to third parties. He depones that the overriding objective of the [Civil Procedure Act](#) and Rules is to facilitate the just, expeditious and affordable resolution of disputes. He adds that the said objective will be defeated if the Applicants are evicted from the suit land and their titles cancelled during the pendency of the appeal. He further contends that the Applicants' Appeal will be rendered nugatory if this Application is not allowed.
4. In response to the Application, the Respondents filed a Replying Affidavit sworn by John Njoroge Kirika, the 2nd Respondent, on 5th June 2025. He states that the Respondents are the bonafide owners of the Land Parcel Numbers Ruiru/Ruiru East Block 1 (Githunguri)1362 (the suit property), which was illegally subdivided into Ruiru/Ruiru East Block 1/4023-4035. He contends that the 2nd to 14th Applicants' claim is that they acquired ownership of the suit property from the 1st Applicant. He further contends that the 1st Applicant obtained ownership of the suit property fraudulently and, as a result, was convicted in Thika Chief Magistrate's Criminal Case No. 3319 of 2012, [Republic v Margaret Njeri Mutwambiri](#). He adds that no appeal was preferred against the said conviction. He faults the Applicants for continuing to deny them the use, possession, and ownership of the suit property, despite being aware that their ownership is tainted with illegality.
5. He urges the court to balance their rights as legitimate owners of the suit property against those of the Applicants, whose claim is premised on illegality. He states that the titles registered in favour of the Applicants ought to be cancelled or annulled to pave the way for proper registration, and that such cancellation would not in any way occasion prejudice to the Applicants. It is his position that the Applicants have no valid or absolute rights over the suit property, and any grievances they may have should be directed to the 1st Applicant, who unlawfully sold the land to them.
6. He contends that no prejudice will be occasioned to the Applicants if the orders sought are granted; he states that, on the contrary, greater prejudice continues to be suffered by them, given that they are deprived of the use of their rightfully acquired land. In conclusion, he states that the balance of convenience tilts in their favour, being the legitimate owners of the suit property.
7. The court directed that the matter be canvassed by way of written submissions. The Applicants filed written submissions dated 18th June 2025, while the Respondents filed written submissions dated 12th June 2025.



Issues for Determination

8. From my analysis of the application, the response by the Respondents and the written submissions by the parties, the sole issue for determination is whether the Applicants have met the requirements for grant of an order of stay of execution under Order 42 Rule 6 of the [Civil Procedure Rules, 2010](#).

Analysis and Determination

9. This application seeks to invoke the discretionary powers of the court, which discretionary powers must be exercised judiciously. Stay of execution is provided for in Order 42 Rule 6(1) of the [Civil Procedure Rules, 2010](#), which empowers this court to stay execution of its judgment pending appeal. The conditions to be met before stay is granted are stipulated in Rule 6(2) 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.”
10. On the issue of substantial loss, learned counsel for the Applicants has submitted that the Applicants will lose their homes where they reside with their families if the stay of execution is not granted. Counsel further submitted that the Respondents have not demonstrated that they will be in a position to restore the Applicants’ home should the appeal succeed.
 11. On the issue of security for due performance of the decree, counsel submitted that the judgment was not in monetary terms and therefore the issue of security does not arise. Counsel has further submitted that the amount of Kshs 40,000,000 the Respondents suggested that the Applicants deposit as security, is colossal. Counsel has added that this application was filed within a reasonable time, being 16 days after the Judgment was issued. Counsel urged the court to balance the hardships of both parties and grant the stay order.
 12. On his part the learned counsel for the Respondents argued that courts must uphold the principle that successful litigants should be allowed to enjoy the fruits of their judgment. It has further been contended that the applicant should first comply with the Judgment before seeking discretionary relief such as a stay, otherwise the order might be rendered unenforceable.
 13. Counsel submitted that the Applicants had not met the requirements for grant of a stay order provided under Order 42 Rule 6(2) of the [Civil Procedure Rules](#). Additionally, Counsel argued that the applicants had not demonstrated what prejudice or loss they would suffer if the stay was denied. On the contrary, counsel contended that the Applicants had failed to respect the judgment and should therefore be compelled to deposit Kshs. 40,000,000 as security for costs.
 14. In support of the requirement for special circumstances to justify a stay of execution, counsel referred the court to Rule 5(2)(b) of the [Court of Appeal Rules, 2022](#), and quoted the principles stated in the case of *Burnet v Francis Industries*, as applied in [Kenya in Kamaliza Security Guards v Zakem Constructions \(K\) Limited](#) [2001] eKLR. Counsel summarized that special circumstances must be assessed by considering:
 - (i) the nature of the plaintiff’s claim;



- (ii) the extent of identity and interrelationship between the parties and their claims;
 - (iii) the strength and size of each party's claims; and
 - (iv) the likelihood of delay and prejudice that would be caused to the Plaintiff if the judgment is not executed.
15. Counsel submitted that no such special circumstances had been demonstrated by the Applicants and thus the court should not grant a stay. It has also been submitted that the Applicants have not shown willingness to furnish any form of security to facilitate the grant of a stay, and therefore they have not met the threshold under Order 42 Rule 6(2) of the *Civil Procedure Rules*.
16. In conclusion, counsel stated that the Respondents should be allowed to enjoy the fruits of their Judgment. Counsel thus urged the court to strike out the application for stay of execution.
17. I have considered the arguments by all the parties with regard to the requirements set out under Order 42 Rule 6 of the *Civil Procedure Rules 2010*, and in my considered view, the Applicant has satisfied the said requirements. Order 42 Rule 6 of the *Civil Procedure Rules 2010* provides that:
- No order for stay of execution shall be made under subrule (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.
18. The Applicants have stated that they would suffer substantial loss if the order of stay is not granted, given that they will lose their homes located on the suit property. The Applicants have also demonstrated that they filed this Application without unreasonable delay.
19. Counsel for the Respondents has pointed out that the Applicants have not provided security for the due performance of the decree. However, nothing stops this court from directing the Applicants to provide the same.
20. The upshot is that the Application dated 21st August 2024 is allowed. The Applicants are directed to deposit security of Kshs 3,000,000/= in court within 21 days; failure to which this order shall stand automatically vacated.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 23RD DAY OF SEPTEMBER 2025.

J. M ONYANGO

JUDGE

In the presence of:

1. Miss Muhoro for the 1st – 14th Defendants/Applicants
2. Mr Kanyi for the Respondents

Court Assistant: Hinga

