



**Woga & 3 others v Osura & 5 others (Petition 20 of 2018)  
[2023] KEHC 19893 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
PETITION 20 OF 2018  
RE ABURILI, J  
JUNE 30, 2023**

**BETWEEN**

**JACKTON OYARO WOGA ..... 1<sup>ST</sup> PETITIONER  
ELKANAH NYARIRO ..... 2<sup>ND</sup> PETITIONER  
JANE AWINO WOGA ..... 3<sup>RD</sup> PETITIONER  
RISPER AJWANG NYANDAT ..... 4<sup>TH</sup> PETITIONER**

**AND**

**JACKTON OYIENGO OSURA ..... 1<sup>ST</sup> RESPONDENT  
ALLAN OKATCH OSURA ..... 2<sup>ND</sup> RESPONDENT  
PROFESSOR WILLIS KOSURA ..... 3<sup>RD</sup> RESPONDENT  
NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT  
THE DIRECTOR OF SURVEY KENYA ..... 5<sup>TH</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

**IN THE MATTER OF ARTICLE 2, 3, 10, 21, 22, 23, 27, 28, 29, 35, 40, 43, 45, 47, 63, 65, 156,  
165(3), 258 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF CONTRAVENTION AND/OR APPREHENDED CONTRAVENTION OF  
FUNDAMENTAL RIGHTS AND FREEDOMS**

**AND**

**IN THE MATTER OF EVICTION ORDERS ON PARCEL NO.111 OF 1973 OTHER  
JUDGEMENTS AND DECREE HEREIN**



**AND**

**IN THE MATTER OF BREACH OF PROPRIETARY RIGHTS AND OWNERSHIP RIGHTS**

**JACKTON OYARO WOGA.....1<sup>ST</sup> PETITIONER**

**ELKANA NYARIRO.....2<sup>ND</sup> PETITIONER**

**JANE AWINO WOGA.....3<sup>RD</sup> PETITIONER**

**RISPER AJWANG NYANDAT.....4<sup>TH</sup> PETITIONER**

**-VERSUS-**

**JACKTON OYIENGO OSURA.....1<sup>ST</sup> RESPONDENT**

**ALLAN OKATCH OSURA.....2<sup>ND</sup> RESPONDENT**

**PROFESSOR WILLIS KOSURA.....3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....4<sup>TH</sup> RESPONDENT**

**THE DIRECTOR OF SURVEY KENYA.....5<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....6<sup>TH</sup> RESPONDENT**

**RULING**

1. This Ruling determines the Applicant's/Petitioner's application dated June 12, 2023 supported by the affidavit of Jackton Oyaro Woga the 1<sup>st</sup> Petitioner herein on behalf of all the other 3 Petitioners.
2. The application seeks for stay of those proceedings pending the hearing and determination of the Petitioner's Court of Appeal Civil Appeal No. 80 of 2019 and that this court adopts the order of the Court of Appeal in Civil Application No. 3 of 2019 granting the orders of status quo until the appeal No. 80 of 2019 is heard and determined.
3. The applicants also pray that costs abide the outcome of the appeal. The applicant's case is that vide Ruling rendered on 6<sup>th</sup> December 2018, the Petition was struck out with costs to the Respondents and the application for stay of Notice to Show Cause in Kisumu HCC No. 111 of 1973 was also dismissed.
4. The applicants sought and obtained leave to appeal and vide an order made by the Court of Appeal Civil Application No. 3 of 2019, the Court of Appeal ordered for status quo as far as eviction of the applicants from East Gem/Nyadhiwa/574 is concerned, until the hearing and determination of Kisumu Court of Appeal Civil Appeal No. 80 of 2019. This was on 30<sup>th</sup> October 2019.
5. The applicants therefore pray that the proceedings pending in this file, which basically involve taxation and recovery of costs awarded to the Respondents, be stayed until the appeal pending before the Court of Appeal is heard and determined.
6. The application was served upon the Respondents' counsel but no response was filed and this court proceeded to hear counsel for the applicant orally on 21<sup>st</sup> June 2023.
7. Mr. Mwamu counsel for the applicants argued that application reiterating the prayers and grounds as supported by the 1<sup>st</sup> applicant's affidavits which I have considered.
8. I observe that the only issue pending in this court is taxation of the Respondent's Bill of Costs dated August 25, 2021 which is drawn at Kshs.3,945,000. The issues at hand involve eviction from land parcel No. East Gem/Nyadhiwa/574.



9. The Applicants lost the petition and application for stay of Notice to Show Cause why they cannot be evicted from the above parcel of land upon which they filed Court of Appeal Civil Appeal No. 80 of 2019 and vide Civil Application No. 3 of 2019, the Court of Appeal ordered for status quo to be maintained such that no eviction would ensure against the applicants from the above cited parcel of land.
10. That being the case, and as the Court of Appeal has already stayed the eviction of the applicants from parcel No. East Gem/Nyadhiwa/574, I find this application for stay of proceedings in this matter merited.
11. I order that there shall be stay of taxation of Bill of Costs filed by the Respondent in this matter pending the hearing and determination of Kisumu Court of Appeal Civil Appeal No. 80 of 2019.
12. Consequently, this file is marked as closed as no other action shall be taken until the determination of the Court of Appeal matter.
13. This file should be submitted to the Court of Appeal for fast tracking of the Court of Appeal matter as ordered in Civil Application No. 3 of 2019.
14. File closed.

**Dated, Signed and Delivered at Kisumu this 30<sup>th</sup> Day of June, 2023**

**R. E. ABURILI**

**JUDGE**

