



**Kokoreh v Owiyo & another (Environment and Land Appeal
E064 of 2024) [2025] KEELC 1353 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E064 OF 2024**

**E ASATI, J
MARCH 20, 2025**

BETWEEN

VINCENT ENRIQUE OMONDI KOKOREH APPELLANT

AND

KEFA ODHIAMBO OWIYO 1ST RESPONDENT

KISUMU COUNTY LAND REGISTRAR 2ND RESPONDENT

*(Being an Appeal from the Judgement of Hon. E.N. Mwenda – PM in the
Environment & Land Court at Kisumu dated 26th Day of July, 2024)*

RULING

1. This ruling relates to the Notice of Motion application dated 2nd December 2024 stated to be brought pursuant to the persons of order 42 Rule 6(1), order 51 Rule 1 & 3 of the Civil Procedure Rule 2010 and sections 1 A, 1B, 3, 3A & 63 (e) of the *Civil Procedure Act*.
2. The application seeks for an order of stay of execution of the judgement dated 26th July 2024 together with the decree therein pending the hearing and determination of the applicant’s appeal. It also seeks that costs of the application be provided for. The application was supported by the averments in the Supporting Affidavit sworn by the applicant on 2nd December 2024 and the annexures thereto.
3. The application was opposed vide the grounds of opposition contained in the Replying Affidavit sworn by the 1st Respondent, Kefa Odhiambo Owiyo on 25th January 2025.
4. The application was urged by way of written submissions.
5. I have considered the contents of the application, the Further Affidavit, the Replying Affidavit and the submissions made by Counsel.



6. The grounds for grant of an order of stay of execution of judgement or court order pending appeal are provided for under Order 42 Rule 6 Civil Procedure Rules 2010 as follows: -

“No order for stay of execution may 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.”

7. To succeed in an application for stay of execution pending appeal, an applicant must demonstrate that unless the order of stay of execution is granted, he/she will suffer substantial loss, that he/she has brought the application without unreasonable delay and should give security for the due performance of such decree or order as may ultimately be binding on him/her.

8. The applicant’s case is that being dissatisfied with the judgement dated 26.7.2024 he has preferred the appeal herein. That in the meantime the Respondent has started sub-dividing and disposing of portions of the subject land to third parties thereby interfering with the subject land before the appeal is heard and determined. That if the Respondent is not stopped from the said activities, the applicant will suffer irreparable loss and damage as he shall be evicted from the place he has called home and lived in a period of more than 12 years and interred the remains of his children. That the applicant has a good appeal that will be rendered nugatory if the application is not allowed. That the applicant made an application for stay of execution before the trial court which application was dismissed. That the applicant is willing to comply with any condition that the court will impose. And that the application was brought without unreasonable delay. To the Supporting Affidavit was annexed a copy of the judgement appealed from. It is in respect of Kisumu CMC MC ELC/15/2019. Among the orders made in the judgement is an order of eviction of the applicant from the suit land parcel No Kisumu/Nyalunya/5831 which was made conditional upon the Respondent paying the applicant a sum of Kshs 233,000/-

9. Also attached to the Supporting Affidavit is a ruling of the trial court dated 28th November 2024 in respect of an application that sought for an order of stay of execution of the judgement of the trial court pending appeal.

10. The Respondent’s case is that the applicant’s application in the trial court was dismissed as there was no evidence of the damage that the applicant will suffer if the stay is not granted. That the applicant has not been evicted from the suit land and there is no process of eviction in place. That no evidence of commencement of sub-division of the land has been shown. That the applicant has not demonstrated how the appeal will be rendered nugatory.

11. That the application has been brought after 2 months’ delay from the date the application in the trial court was dismissed. That the application has failed to meet the threshold to warrant grant of stay of execution orders thus should be dismissed.

12. On the grounds advanced, I find that a case has been made out for issuance of an order of stay of execution of the judgement pending appeal. It is not denied that the applicant resides on the suit land and that the judgement ordered for his eviction after the Respondent meets the conditions set in the judgement. If the eviction is to happen the applicant will no doubt suffer substantial loss. The Respondent submits that there is no process of execution that has been commenced. However, in the absence of an order of stay, nothing stops the Respondent from initiating the process of execution



of the judgement any time as soon as he meets the conditions of the judgment. An order of stay of execution will safe guard the prevailing status quo pending the hearing and disposal of the appeal.

13. For the foregoing reasons the court finds that the application has merit and hereby allows it as follows:
- a. An order of stay of execution of the trial court's judgement dated 26th July 2024 together with the decree therein is hereby granted pending hearing and determination of the appeal on condition that the applicant deposits a sum of Kshs.150,000/- in court as security within 45 days hereof failing which the stay order hereby granted shall lapse.
 - b. Costs of the 1st Respondent.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 20TH DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

Ken Omollo for the Appellant/Applicant.

Onyango for the 1st Respondent.

No appearance for the 2nd Respondent.

