



**Odoyo v Ojwang (Environment & Land Case 348 of 2016)  
[2023] KEELC 19853 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19853 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 348 OF 2016**

**E ASATI, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**ODOYO THADDEUS ODOYO ..... PLAINTIFF**

**AND**

**HENRY ONYANGO OJWANG ..... DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated December 20, 2022 stated to be brought pursuant to the provisions of Section 152E of the [Land Act, 2012](#), Regulation 65, 66 and 67 of the [Land Regulations 2017](#), Section 1A, 1B and 3A of the [Civil Procedure Act](#) 2010 and Orders 24(6) and 51 of the [Civil Procedure Rules 2010](#). The application seeks for order that;
  - a. The honourable court be pleased to issue an order evicting the Respondent from all that property known as LR 16609 (IR 179265);
  - b. The honourable court be pleased to direct the Officer Commanding Kondele Police Station to provide security to the Applicant while evicting the Respondent and any other trespassers from the Applicant's parcel of land known as 16609 (IR No 179265) situated at Mamboleo Estate within Kisumu County
  - c. Costs of the application be provided for.
2. The ground of the application as shown on the face of the Notice of Motion are that judgement was entered in favour of the Applicant on November 14, 2019 and that a decree has subsequently been drawn. That the Applicant has put up apartments which he is leasing to unsuspecting members of the public and is likely to part with total possession of the suit land and thereby defeat the judgement.
3. The application is supported by the averments contained in the Supporting Affidavit of Odoyo Thaddaeus Odoyo the Applicant and the annexures thereto.



4. In response to the application, the Respondent filed his Replying Affidavit sworn on January 30, 2023. He deposed that having been aggrieved by the judgement, he filed an appeal to the Court of Appeal namely Kisumu Court of Appeal ELC Appeal No 106 of 2020 Henry Onyango Ojwang –vs- Odoyo Thaddaeus Odoyo which is pending determination. That he is not to blame for delay in prosecuting the appeal for it's the court that sets the dates for hearing of appeals before it.

He further averred that if the application is allowed, the appeal will be rendered nugatory and an academic exercise. That there is no evidence that he is likely to part with possession of the suit land.

5. The application was argued by way of written submissions. The Applicant filed written submissions dated May 25, 2023 through the firm of Kipkenda & Co Advocates. The Respondent chose to rely on the contents of the Replying Affidavit.

6. There is no order of stay of execution in place. The record shows that an application by the Respondent for stay of execution of the judgment pending appeal to the Court of Appeal was on September 30, 2022 dismissed. The Respondent in paragraph 9 of the Replying Affidavit admitted that there is no order stay of execution of the judgement and in paragraphs 10 thereof he blamed his former advocates for the same.

Order 42 Rule 6(1) of the [Civil Procedure Rules 2010](#) provides: -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appeal from may order .....

In the circumstances therefore, there is nothing stopping this court from issuing the orders sought which are aimed at facilitating execution of the judgement/decree.

7. The court in its judgement ordered the Respondent to pull down the illegal buildings erected on the suit land and to vacate the suit land within 60 days from the date of the judgement. The applicant averred that he later served the Respondent with an eviction notice dated 2/8/2021 to vacate the suit property within 90 days from the date of service of the eviction notice. The 90 days have long elapsed. The Respondent has evidently had ample time to comply with the judgement.

8. In the absence of an order of stay of execution of the judgement and in view of the provisions of Order 42 Rule 6(1) of the [Civil Procedure Rules 2010](#), the terms of the judgement and the eviction Notice served, I find that the prayer for an eviction order is merited.

9. The next relief sought in the application is for an order directing the OCS Kondele Police Station to provide security during the eviction exercise. I find that the prayer is merited in order to maintain law and order, and to ensure security during the execution.

10. For the foretasted reasons I find that the Notice of Motion application dated December 20, 2022 is merited and allow it as follows:

- a. An order for the eviction of the Respondent/Defendant from the suit land is issued is hereby. The Respondent to vacate and hand over vacant possession of the suit land parcel known as 16609 (IR No 179265) situated at Mamboleo Estate within Kisumu County to the applicant forthwith, in default of which warrant of eviction shall issue for the forceful eviction of the Respondent from the suit land by a court bailiff or duly licensed auctioneer.
- b. The OCS Kondele Police Station to provide security and maintain peace and order during the eviction of the DefendantRespondent from land parcel known as 16609 (IR No 179265) situated at Mamboleo Estate within Kisumu County.



c. Costs to the applicant.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

**In the presence of:**

Maureen: Court Assistant.

Odoyo for the Plaintiff/Applicant.

Onyango holding brief for Indimuli for the Defendant/Respondent

