



**Okidi v Opado & 2 others (Environment and Land Appeal
E011 of 2023) [2023] KEELC 20918 (KLR) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20918 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E011 OF 2023
GMA ONGONDO, J
OCTOBER 23, 2023**

BETWEEN

HENRY ONYANGO OKIDI APPELLANT

AND

PHILEMON ONGURU OPADO 1ST RESPONDENT

BOAZ OMONDI ONGURU 2ND RESPONDENT

JOSEPHAT ONGURU 3RD RESPONDENT

RULING

1. In a Notice of Motion application dated 21st September 2023, the applicant/appellant, Henry Onyango Okidi through Nyakwamba and Company Advocates is seeking the orders infra:
 - a. That thereafter the Honourable Court be pleased to make an order of stay of execution to stop any execution against the defendant/applicant until the appeal herein is heard and finalized.
 - b. The costs of this application be provided for.
2. The three (3) respondents through Omuthe and Company Advocates, opposed the application by a replying affidavit sworn on 26th September 2023 by the 1st respondent, Philemon Ongutu Opando.
3. It is noteworthy that on 24th August 2022 the trial court delivered its judgment which provoked this application
4. Mr. Omuthe, learned counsel has informed this court that the application can be compromised to pave way for hearing of the appeal herein.
5. Mr. Nyakwamba learned counsel for the appellant /applicant has no objection to the proposal.



6. Bearing in mind the character of the application, the parties' sentiments and the ends of justice under Article 159(2)(b) of *the Constitution* of Kenya, 2010 and section 3 of the *Environment and Land Court Act* 2015(2011), the application dated 21st September, 2023 is hereby determined on the following terms:
- a. There be stay of execution of the trial court's judgment delivered on 24th August 2022 in Oyugis Senior Principal Magistrate's Environment and Land case No. 33 of 2021 pending the hearing and determination of this appeal.
 - b. The appellant and the respondents to maintain the prevailing status quo over the suit land, Parcel No Central Kasipul/Kamuma/1767 namely that the respondents to continue in occupation of the same pending the hearing and determination of the appeal.
 - c. The appellant's counsel to file and serve record of appeal on or before 4th December 2023 for directions.
7. It is so ordered.

DATED, DELIVERED AND SIGNED AT HOMABAY THIS 23RD DAY OF OCTOBER 2023

G.M.A ONG'ONDO

JUDGE

PRESENT.

- a. Mr. Nyakwamba learned counsel for the appellant
- b. Mr. Omuthe learned counsel for the respondents.
- c. Court Assistant, Terence.

