



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omondi v Ongiri & 3 others (Land Case Appeal E049 of 2024)  
[2025] KEELC 1266 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1266 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
LAND CASE APPEAL E049 OF 2024**

**E ASATI, J  
MARCH 13, 2025**

**BETWEEN**

**VINCENT ERIQUE OMONDI ..... APPELLANT**

**AND**

**PENINA ADHIAMBO ONGIRI ..... 1<sup>ST</sup> RESPONDENT**

**FLORENCE OBORAH ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR – KISUMU ..... 3<sup>RD</sup> RESPONDENT**

**JOAB ONGIRI ATTITO ..... 4<sup>TH</sup> RESPONDENT**

*(Arising from the ruling delivered on 26th August 2024 by Honourable Rashid ELC  
Case No E146 of 2023 Penina Adhiambo Ongiri VS Vincent Erique Omondi & 2 others)*

**RULING**

1. Vide the amended Notice of Motion dated 11<sup>th</sup> October, 2024 the Applicant sought for orders that;
  - a. the honourable court be pleased to stay proceedings in Kisumu Chief Magistrate’s court ELC Case No.E146 of 2023 until hearing and determination of the appeal
  - b. pending the hearing and determination of this appeal, a temporary injunction be issued restraining the Respondent/Defendant by themselves, their agents, servant, employees, assigns, personal representatives or any other person in authority from selling, transferring, dealing with or disposing of all that parcel of land known as Kisumu/Nyalunya/2970 by any other way interfering with the Plaintiff’s proprietary interest in the said parcel of land
  - c. that the honourable court be pleased to make such orders as it deems necessary to safeguard the ends of justice



- d. costs of and incidental to the application be provided for.
2. The application was based on the grounds that the subject matter of the proceedings concerns property belonging to the estate of Joseph Ongiri Atito, deceased. That there is objection proceedings to issuance of Grant of Letters of Administration to the 1<sup>st</sup> Respondent in Kisumu Succession Cause No.792 of 2018 coming up on 3<sup>rd</sup> October, 2024.
  3. That the Applicant herein filed an application for stay pending the hearing and determination of the objection in Kisumu CMC ELC Case No. E146 of 2023 dated 15<sup>th</sup> August, 2023 and that the same was dismissed on the grounds that it was res judicata.
  4. That the Applicant having been dissatisfied with the ruling intends to appeal to Environment and Land Court. That if the stay is not granted, the appeal shall be rendered nugatory. That it is in the interest of justice that the proceedings in Kisumu CM C ELC Case No. E146 of 2023 be stayed.
  5. The application was opposed vide the contents of the Replying Affidavit sworn by the 1<sup>st</sup> Respondent on 20<sup>th</sup> October, 2024. The Respondents' case is that the issue of stay of proceedings in Kisumu CM C ELC Case No. E146 OF 2023 had been raised and determined in three (3) different applications before the Magistrate's court. That the Applicant is a stranger to the Estate of the deceased as he is not a family member, dependant or beneficiary hence has no locus standi to claim to apply for objection of grant.
  6. That the Applicant has intermeddled with the estate of the deceased and fraudulently transferred the subject matter to his ownership and is selling to third parties.
  7. That the orders sought threaten the Respondents' constitutional rights of access to justice. That the amended Notice of Motion dated 11<sup>th</sup> October, 2024 under the Civil Procedure Rules not amendable as there is no law to initiate such amendment and should be dismissed with costs.
  8. It was submitted on behalf of the Applicant that the Applicant has an arguable appeal and that the appeal would be rendered nugatory to the prejudice of the Applicant if the application is not allowed.
  9. I have considered the application, the response thereto and the oral submissions. In the case of Kenya Wildlife Services -vs- James Mutembei (2019)eKLR the court held that stay of proceedings should not be confused with stay of execution pending appeal. That stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. That the test for stay of proceedings is higher and stringent.
  10. It is clear from the Supporting Affidavit and the Memorandum of Appeal that the applicant had made an application seeking for stay of proceedings before the trial court. That vide the ruling the subject matter of the appeal, the trial court declined the application hence the appeal herein.
  11. From the grounds of appeal contained in the Memorandum of appeal dated 28<sup>th</sup> August 2024, the main issue for determination in the appeal is whether or not the trial court erred in declining to grant the orders of stay of proceedings pending hearing of the objection in the Succession matter.
  12. The present application seeks inter alia, that the court grants the same orders of stay of proceedings pending hearing and disposal of the appeal. My considered view is that to allow the application will amount to determining the appeal before it is heard.
  13. The current status of the objection proceedings has not been disclosed. As at the time of filing the application, it was scheduled for hearing on 3<sup>rd</sup> October 2024.



14. The second prayer in the application is for an order of temporary injunction. However, the conditions for grant of temporary injunction as contained in Order 40 Rule 1 and the case of Giella vs Cassman Brown have not been demonstrated.

15. I find that the application lacks merit and hereby dismiss it with costs to the Respondents.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 13<sup>TH</sup> DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen - Court Assistant.

Awuonda for the Appellant/Applicant.

No appearance for the Respondents.

