



**Oyaro v Anayo & another (Environment and Land Appeal
E016 of 2025) [2025] KEELC 1268 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1268 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E016 OF 2025**

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

BETWEEN

ELIZABETH AKINYI OYARO APPELLANT

AND

PHILIP EDWINE ANAYO 1ST RESPONDENT

**THE TOWN CLERK, MUNICIPAL COUNCIL OF KISUMU (NOW COUNTY
GOVERNMENT OF KISUMU) 2ND RESPONDENT**

*(Appeal from the Judgement and decree of the Hon. R.M. Oanda, Senior Principal
Magistrate in Winam SPMC ELC NO.72 of 2018 delivered on 12th February, 2025)*

RULING

1. This ruling is in respect of the Notice of Motion dated 28th February, 2025 expressly to be brought pursuant to the provisions of Order 40 Rules 1 & 2 of the Civil Procedure Rules and sections 1A, 1B and 3A.
2. The application seeks for an order that pending hearing and determination of the appeal, a temporary injunction do issue restraining the Respondents, their servants and/or agents jointly and severally from evicting the Applicants, cultivating, selling, transferring, disposing of, dealing and/or interfering whatsoever with the suit parcel number UNSURVEYED RESIDENTIAL SITE 567 and 568 MIGOSI SITE AND SERVICE SCHEME and that the costs of the application be provided for.
3. The application was supported by the contents of the Supporting Affidavit sworn by the Appellant/Applicant on the date of the Notice of Motion and the annexures thereto.
4. The application was opposed by the 1st Respondent vide the contents of the Replying Affidavit sworn by the 1st Respondent on 5th March, 2025 and the annexures thereto.



5. The substantive prayer sought in the application is for an order of temporary injunction pending hearing and determination of the appeal.
6. This court in the exercise of its appellate jurisdiction is empowered by the provisions of Order 42 Rule 6(6) to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
7. In addition to compliance with the procedure of filing an appeal from the subordinate court the applicant has to demonstrate the grounds for grant of temporary injunction as set out in Order 40 Rule 1 and the case of *Giella vs Cassman Brown*. The Appellant has already filed the appeal vide the Memorandum of Appeal dated 25th February, 2025.
8. The Applicant's case herein is that her suit in WINAM SPMC ELC NO.72 OF 2018 wherein she sought for an order of permanent injunction restraining the Respondent from interfering with the suit lands sold to her by one Charles Lutta Kasamani was dismissed on 12th February, 2025. That being aggrieved by the judgment she preferred the appeal herein. That the Respondent has however commenced the process of execution by demolishing the business structures on the suit land owned by her. That the Respondent sent over 50 men who were armed with dangerous weapons to attack the occupants
9. That the application is necessary so as to preserve the subject matter of the appeal together with the occupants of the suit property who risk being injured. That she has since reported the matter to the police and obtained an OB number. That in the event that the application is not allowed, the appeal will be rendered nugatory. That she has a prima facie case with a probability of success.
10. A copy of the judgement of the trial court annexed to the Supporting Affidavit confirms that the suit was dismissed with no orders as to costs. This means that the actions of the Respondents, if any, complained of by the Appellant are not in execution of the judgement as there is no order made by trial court that is capable of execution.
11. The applicant annexed photographs to the Supporting Affidavit to support her claim.
12. The 1st Respondent's case as contained in the Replying Affidavit is that the Applicant has not brought herself within the parameters provided for in Order 42 Rule 6(2) in seeking for stay of execution of the judgement in the subordinate court. That the Applicant has not demonstrated that she will suffer substantial loss if the order sought is not granted. That she has not demonstrated that she is willing to provide security for the due performance and satisfaction of the decree of the court which she wants the court to stay.
13. The 1st Respondent averred that he is the owner of the suit lands which ownership he traces to Letters of Allotment by the 2nd Respondent. That according to records held by the 2nd Respondent, he is the owner of the two parcels of land, the suit lands herein.
14. That as such he is entitled to immediate possession thereof. That the Appellant did not explain how she came to be in possession of an original letter of allotment in her name yet she claims to have gotten the land as a gift from her husband who claimed to have bought the land from one Charles Lutta Kasamani who was the original allottee of the land.
15. That the suit lands are meant for residential purposes and they ought to be developed in accordance with the approved development plans.
16. The 1st Respondent denied threatening the Appellant with any crude weapon. He further denied sending 50 men to evict the Appellant and averred that he will follow due process to get possession.



17. To the Replying Affidavit, the 1st Respondent annexed his entire pleadings and exhibits placed before the trial court.

The 2nd Respondent did not respond to the application.

18. I have considered the application, the Replying Affidavit and the submissions made by Counsel.

19. Although the parties in their submissions referred to execution of the judgement and orders of stay of execution, the application before court is for temporary injunction pending appeal.

20. It is not contested that the Applicant lost the case before the trial court and that she has preferred the present appeal. It is also clear that both the Appellant and the 1st Respondent lay claim to suit lands.

21. The Appellant claims to be in possession thereof. The 1st Respondent avers that he was stopped at the inception of the suit in the trial court, from developing the land. As at now there is nothing that stops the 1st Respondent from taking possession of the lands.

22. However, taking into account the circumstances of the case and the fact that the Appellant is in occupation and claims to have developed the structures thereon, I find that it is in the interest of justice to preserve the prevailing status quo pending hearing and determination of the appeal by granting an order of temporary injunction.

23. The 1st Respondent can be compensated by way of costs and an undertaking for damages.

24. The application is therefore hereby allowed as follows:

- i. pending hearing and determination of the appeal, a temporary injunction is issued restraining the Respondents, their servants and/or agents jointly and severally from evicting the Applicants, cultivating, selling, transferring, disposing of, dealing and/or interfering whatsoever with the suit parcel numbers Unsurveyed Residential Site 567 And 568 Migosi Site And Service Scheme on condition that the Applicant gives an undertaking as to damages, in writing and to be filed herein within 14 days hereof.
- ii. Costs of the application to the 1st Respondent.

Orders accordingly.

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

E. ASATI,

JUDGE.

In the presence of:

Maureen- Court Assistant.

Akinyi h/b for Odeny for the Applicant.

Okongo for the Respondent.

