



**Orina v Nyaboke & 2 others (Environment and Land Appeal
E014 of 2022) [2023] KEELC 21750 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21750 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E014 OF 2022**

**JM KAMAU, J
NOVEMBER 23, 2023**

BETWEEN

JUSTUS ONGERA ORINA PLAINTIFF

AND

EBISIBA NYABOKE & 2 OTHERS DEFENDANT

RULING

1. By a Notice of Motion dated 12/10/2023 the Applicant seeks the following orders: -
 1. That this Honourable court be pleased to certify the instant Application as urgent and the same be heard ex-parte in the first instance.
 2. That service of this Application be dispensed with in the first instance.
 3. That the Honourable court be pleased to issue orders of stay of execution of the warrant of arrest issued on the 12th October, 2023 pending hearing and determination of this Application.
 4. That the Honourable court be pleased to issue orders of stay of execution of the warrant of arrest issued on the 12th October, 2023 pending the hearing and determination of the reference dated 6th September, 2023 filed herein on 26th September, 2023.
 5. That costs of this Application be provided for.
2. The grounds for the said Application as set out in the body of the Application and in the supporting Affidavit of Justus Ongera Orina, the Applicant, are that the Taxation of Bill of costs by the Decree Holder was concluded following the Judgement delivered by this court on 13/6/2023 dismissing the Appeal by the said Justus Ongera Orina. The said Bill was taxed at Ksh. 274,146 and a certificate of costs issued. Consequently, there was a warrant of arrest issued against the said Judgment Debtor after the Notice to show cause came up for Hearing in court on 12/11/2023.



3. A Reference was filed against the Bill of Costs which is still pending before this court. He also claims that the warrants of arrest were issued prematurely because there is already pending in court a Reference.
4. In the Replying Affidavit by Ebisiba Nyaboke Jairo on behalf of the Respondents sworn on 23/10/2023 she states that after filing the Application for Reference on 6/9/2023, the Applicant never took a date for the same and that the current Application is an abuse of the court process, frivolous and the same is meant to prevent the 1st Respondent from enjoying the fruits of her Judgment.
5. I allowed the parties to canvass the Application in court and I wish to state that there is no stay of execution and the Decree Holders cannot sit back and wait for the Judgment Debtor to comply with the Decree as and when they wish. An intention to Appeal does not act as stay of execution. The court has to be moved to make orders for stay. However, I will allow a conditional stay of execution that the Judgment Debtor /Applicant deposits half of the taxed costs with the court within the next 30 days from the date of this Ruling.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 23RD DAY OF NOVEMBER, 2023

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: - Brenda

Mr. Nyandoro holding brief for Mr. Gichana for the Appellant

Mr. Kimaiyo for the Respondents

