



**Odhiambo & 3 others v Nyotumba (Environment and Land Appeal
53 of 2022) [2023] KEELC 21709 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21709 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 53 OF 2022
GMA ONGONDO, J
NOVEMBER 21, 2023**

BETWEEN

**KENNEDY ODHIAMBO 1ST APPELLANT
WILLIAM ODERO 2ND APPELLANT
JOSEPH ODERO OCHIENG 3RD APPELLANT
PHILIP ODERO 4TH APPELLANT**

AND

GODFREY OSAGO NYOTUMBA RESPONDENT

RULING

1. This ruling is in respect of a notice of motion dated 16th January 2023 duly filed in court on even date (The application herein) where the four appellants through the firm of Ongoso & Company Advocates, are seeking the orders; *inter alia*,
 - a. The honourable court be pleased to file the appeal of the ruling dated the 1st day of December, 2022 out of time condemning the 1st to the 4th Defendant to 6 months civil jail irrespective of the application dated the 26th day of October 2022 which was struck out due to technicalities of the Advocate not signing the said application on the face value though the respondents had signed the same and of which the defendants/contemptuous had filed an appeal at the High Court of Kenya at HomaBay being dissatisfied with the said earlier ruling entered on the 25th day of October 2022 condemning them to civil jail.
 - b. Alternatively, the Honourable Court be pleased to stay the orders condemning the defendants/contemptuous to 6 months civil jail as was entered on 1st day of December, 2022 awaiting the hearing of the said appeal against the said ruling in the first instance.



- c. And in the alternative do reverse the said orders against the defendants/contemptuous committing them to Civil Jail pending hearing and determination of the said appeal inter-partes.
 - d. The costs of this application be in the cause.
2. The application is founded upon a supporting affidavit of nine paragraphs sworn on 16th January 2023 by the applicant's counsel, Albert Ayoma Ongoso and a copy of submissions marked as "AAO" annexed to the affidavit. Also, the application is based on grounds 1 to 5 set out on it's face. In a nutshell, the applicants' assert that the trial court's ruling delivered on 1st December 2022 is unjust and will greatly cause trauma to them.
 3. The respondent who are represented by the firm of Ken Omollo & Company Advocates, did not respond to the application.
 4. Besides, counsel for the respective parties filed a duly signed consent dated 14th February 2023 which reads inter alia;

"That there be a stay of execution of the civil jail orders made by the trial court on 1st December 2022 pending the hearing and determination of this appeal".
 5. In the premises, I find the said consent solid, sound and has resolved the issues in the application.
 6. So, the consent is hereby adopted and the application is disposed of accordingly.
 7. Parties to bear their respective costs of the application.
 8. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 21ST DAY OF NOVEMBER 2023

G.M.A ONG'ONDO

JUDGE

PRESENT

1. Court Assistant, Luanga

