



**Onguso v Makori (Environment and Land Appeal E008 of 2023)  
[2023] KEELC 22319 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22319 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND APPEAL E008 OF 2023**

**JM KAMAU, J**

**DECEMBER 20, 2023**

**BETWEEN**

**SHEM ONAMI ONGUSO ..... PLAINTIFF**

**AND**

**CHRISTOPHER NYACHOTI MAKORI ..... DEFENDANT**

**RULING**

1. The applicant moved this court by way of an appeal from Principal Magistrate Court, Keroka ELC No. 69 of 2019. He prayed for orders that: -
  - a. An eviction order to issue against the Defendant from the Plaintiff's Land parcel No. East Kitutu/Mwomangera/4370.
  - b. General Damages
  - c. Costs of the suit.
2. The Applicant was the Defendant in the lower Court. Judgment was given in the following terms: -
  - a. The Defendant by himself, agents, servants or any other persons acting on his behalf is restrained from trespassing and/or occupying Land Parcel No. East Kitutu/Mwamangera/4370 which rightfully belongs to the Plaintiff.
  - b. If in process by a portion the Defendant is directed to quit the said occupation and give room for the Plaintiff to develop and enjoy possession of the said parcel of Land No. East Kitutu/Mwamangera/4370.
  - c. The said Title East Kitutu/Mwamangera/4385 to be recalled by the Land Registrar and rectify to indicate the right position on the ground for the benefit of the Defendant for as it is, it is errored and invalid.



- d. The Plaintiff herein is allowed to re-apply for replacement of Title East Kitutu/Mwamangera/4370 through the laid down procedures for lost Title Deed since the original is considered misplaced and /or lost.
3. Being dissatisfied with the said Judgment, the Applicant filed this Appeal and prayed for the following orders in a motion dated 27/10/2023.
    - (a) spent.
    - (b) That pending the hearing inter partes of this application there be an order to stay the execution of the decree in Keroka ELC Case No. E016 of 2019.
    - (c) That pending the hearing and determination of this appeal there be an order of stay of the execution of the decree herein and it is alternative the parties maintain the status quo that was prevailing on 20/9/2023 when judgment/decree in Keroka ELC Case No. E016 of 2019 was made.
    - (d) Costs of the application be provided for.
  4. The Grounds in support of the said Application are: -
    - i. That the Subordinate court at Keroka that is seized with Keroka ELC case No. 016 of 2019 had declined to grant the stay of execution and referred the parties to this court.
    - ii. That this Honourable Court has both Appellate powers to hear this Application.
    - iii. That unless the stay of execution is granted pending the hearing and determination of this Appeal, the Applicant herein stands to suffer a lot of Loss and Damages as he will not access his maize and bean crops in the disputed land or portion of land.
    - iv. That this Application has been filed timeously.
    - v. That it is in the interest of justice to grant the same.
    - vi. That by granting this application the respondent herein shall not suffer any summon prejudice or inconvenience.
  5. The same has been opposed *vide* Replying Affidavit sworn by the Respondent whose date is not indicated urging this court to dismiss the Application on *inter alia* the ground that there is pending an Application for Review in the lower Court. On this ground alone, I find that 2 courts cannot be called upon to be dealing with a matter simultaneously and I disallow the Application dated 27/10/2023.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023.**

**MUGO KAMAU**

**JUDGE**

In the Presence of:

Court Assistant: - Brenda

No appearance for the Applicant

Ms Bochaberi for the Respondent

