



REPUBLIC OF KENYA



**Opwora & another v Sondai (Environment & Land Case
E054 of 2024) [2025] KEELC 3691 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3691 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E054 OF 2024**

LC KOMINGOI, J

APRIL 24, 2025

BETWEEN

CALEB WAFULA OPWORA 1ST APPELLANT

KHAYIMBA NAFTALI AKALA 2ND APPELLANT

AND

IBRAHIM LEI SONDAI RESPONDENT

***(BEING AN APPEAL FROM THE JUDGEMENT OF THE LEARNED MAGISTRATE
HON. KAGONI E.M.(MR) (SPM) – DELIVERED ON 3RD DECEMBER, 2024)***

RULING

1. This ruling is in respect of the Notice of Motion dated 16th December 2024 brought under rules of [Civil Procedure Act](#) and all enabling provisions of the law.
2. It seeks orders;
 - i. Spent
 - ii. Spent
 - iii. That the Appellants herein be granted leave to make an Appeal in relation to Civil Suit No. E067/2022 at the Magistrate’s Court at Kajiado.
 - iv. Any other relief this Hon. Court may deem fit.
3. The grounds are on the face of the application and are set out in paragraphs 1to 4. The Application is supported by the Affidavit of Caleb Wafula Opwora and Kayimba Naftali Akala, the Appellants herein sworn on 16th December 2024.



4. The Application is opposed. There is a Replying Affidavit sworn by Ibrahim Lei Sondai, on the 29th January 2025.
5. On the 29th January 2025, the Court directed that the Notice of Motion be canvassed by way of written submissions.
6. The Appellants' submissions are dated 10th February 2025. Counsel submitted that the Judgement dated 3rd December 2024 ought to be stayed as per the condition set out in Order 42 Rule 6 (2) of the Civil Procedure Rules. He has put forward the cases of; Anderson Omondi Owandho (suing as the legal representative of the estate of Thomas Rajwal (deceased)) VS Augustino Onieki [2007] eKLR; Vishram Ravji Halai VS Thornton & Turpin [1990] KLR 365; Suleiman VS Amboseli Resort Ltd [2004] 2 KLR 589. He prays that the Appellants be found to have demonstrated substantial laws as the revocation of their title would lead to loss of the property.
7. The Respondent's submissions are dated 5th February 2025. Counsel submitted that the Appellants have not properly invoked the jurisdiction of this Court. That this is fatal to their case.
8. It is further submitted that the Appellants have failed to demonstrate substantial laws. He has put forward the case of Charles Wahome VS Angela Wairimu Gethi [2008] eKLR. He prays that the Application be dismissed.
9. I have considered the Notice of Motion, the Affidavit in support, the Response thereto, the Rival submissions and the authorities cited. The issue for determination is whether this application is merited.
10. A quick glance at the Notice of Motion shows that it brought under the rules of the [Civil Procedure Act](#) and all enabling provisions of the law. The same is drawn by Ajwang' & Associates Advocates. The question before this court is why would an advocate fail to quote the express provisions of the law. The Civil Procedure Rules were not made in vain.
11. I have gone through the prayers sought. The only pending prayer for consideration is that of leave to file an appeal against the judgement delivered on 3rd December 2024. This Notice of Motion dated 16th December 2024 is brought barely 13 days after the judgement was delivered. The Appellants did not require any leave to file the appeal.
12. There is already a memorandum of appeal filed dated 16th December 2024. However, no copy of judgement and/or Decree have been annexed. I agree with the Respondent's submissions that the Appellants have not properly invoked the jurisdiction of this Court to warrant the grant of the orders sought.
13. It is not even clear what orders are being sought. In their submissions, the Appellants seem to be seeking orders of stay of execution under Order 42 Rule 6 (2) of the Civil Procedure Rules. Parties are bound by their pleadings. This is a poorly drawn Notice of Motion. The same is defective.
14. I find no merit in the Notice of Motion and the same is struck out with costs to the Respondent.
15. The Appellants have the liberty to bring a proper application for consideration by this Hon. Court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF APRIL 2025.

L.KOMINGOI

JUDGE



In The Presence Of:

N/A for the Appellants

Mr. Itaya for the Respondent

Court Assistant: Mutisya

