



REPUBLIC OF KENYA



**Mbulo & another v Nyamwaya (Environment and Land Miscellaneous Case 2 of 2023) [2025] KEELC 5313 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 5313 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE 2 OF 2023**

**MN KULLOW, J**

**APRIL 7, 2025**

**BETWEEN**

**GEORGE OTIENO MBULO ..... 1<sup>ST</sup> APPELLANT**

**MICHAEL ODHIAMBO MBULO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**BENEDICT OWUOR NYAMWAYA ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 8/9/2023, the Applicant sought for the following Orders:
  - i. Spent
  - ii. That pending the hearing and determination of the Application interested Appeal. This honourable court be please to issue an Order of stay of execution and/or further execution pf the Judgement dated 2/12/2015 and consequential decree and/or Orders.
  - iii. That the court do issue an Order concerning Land Reference No. SUna East Area “b” Kwa/326 pending the hearing and determination of the Application.
2. The Application is premised on the grounds that Judgement was delivered on 2/12/2015 and an Order of eviction was granted against the Defendant/Applicant herein.
3. The Applicants contend that they have lived on the said parcel of land together with grandparents, parents and other family members since the 1970s. The Applicant further contested that they seek to review the Judgement on the basis that there exist an error on the face of the record whereas the court had relied upon non-existent documents in arriving at that decision and further that the court had no jurisdiction to hear and determine this matter and that Orders were issued by the court without taking into account who was in occupation of the land.



4. The Applicants further contend that the trial court had Summarily dismissed the Applicants' request for leave to file Further Submissions and hurriedly proceeded to deliver its Ruling on the Application at Noon without giving any reasons.
5. Further, the reasons stated above. The Applicants are apprehensive that the Respondent is ready to evict them from the suit land and the eviction shall cause the Applicant's intended Appeal to be rendered nugatory and thus occasion great prejudice to the Applicant. He further stated that his Appeal has higher chances of success and unless the Orders sought are granted, the Respondent will proceed to evict them and render them homeless and loss of basic dignity.
6. The Application was opposed by the Respondent by way of a Replying Affidavit dated 16/10/2023. The Respondent contended that the matter was heard on merit and Judgement entered in was in his favour on 2/12/2015 and he was pursuing the Applicants eviction from the land.
7. The Respondent further averred that the Application is bad in Law as the only remedy for the Applicant was an Appeal which was overtaken by events by dint of legal timeliness.
8. I have considered the Notice of Motion dated 8/9/2023, the Affidavit in support of the Application, and the Replying Affidavit in opposition to the Application and the Submissions filed therein and the issue for determination is whether the Applicant will suffer loss.
9. It is now established that before an Application for stay of execution is successful a party must satisfy that he is likely to suffer substantial loss unless the Orders sought are granted.
10. Orders 42 Rule 6(2) of the Civil Procedure Rules 2010 states that:
  - a. The Court is satisfied that substantial loss may result to the Applicant unless the Application is made, and the Application has been made without unreasonable delay and,
  - b. Such security as to costs of due performance of such decree or Order as may ultimately be binding on him has been given by the Applicant.
11. In the Instant Application, the Applicant has contended that in the evict the eviction shall be carried out and he is likely to be rendered homeless and his basic right to dignity denied.
12. Having considered the Application and taking into consideration the Applicants grandparents, parents and siblings are living in the suit land, I find that if they are evicted from the suit land then substantial loss will occur and consequently it is my considered view that the Notice of Motion dated 8/9/2023 is merited and I allow it on the following terms:-
  1. That pending the hearing and determination the Appeal. An Order of stay of execution is hereby issued and that further execution of the Judgement dated 2/12/2015 and the consequential decree and/or Orders are hereby stayed.
  2. That an order is hereby issued conserving Land Parcel No. Suna East Area "b" Kwa/326 pending the hearing and determination of the intended Appeal.
  3. That the cost of the Application be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF APRIL, 2025**

**MOHAMMED N. KULLOW**



## **JUDGE**

In the presence of:

Mr. Aeleon Alisai For the Plaintiff

No Appearance for the Defendant

Philomena (Court Assistant)

