



REPUBLIC OF KENYA



KENYA LAW
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**Omondi v Omondi (Environment and Land Appeal E064 of 2021)
[2022] KEELC 2521 (KLR) (15 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E064 OF 2021**

**A OMBWAYO, J
JULY 15, 2022**

BETWEEN

JOYCE ATIENO OMONDI APPELLANT

AND

PRISCA AWUOR OMONDI RESPONDENT

(Being an appeal from the Honorable W. K. Onkunya delivered on 25th august 2021)

RULING

1. The appellant has come to this court for stay of proceedings in Kisumu CMC ELC No. E050 OF 2021 pending appeal. The appeal emanates from the decision of Honourable W. K. Onkunya delivered on 25/8/2021 between the appellant as 2nd Defendant and respondent as plaintiff. The appellant raised a Preliminary Objection on a matter of time. The appellant prayed that the suit be struck out for being time barred. The objection was dismissed and therefore this appeal.
2. The Appellant argues that because the appeal is based on a Preliminary Objection, then it should be heard first. The appellant has applied for proceedings but same is not forthcoming.
3. The respondent on her part states that the application is frivolous and vexatious and that the applicant has failed to meet the threshold for stay.
4. The respondent argues that the applicant is guilty of laches. I have considered the application and response and do find that appeal is premised on a preliminary objection that the suit is time barred.
5. It is this courts view that the Preliminary objection if successful will dispose of the matter. The parties have not annexed the pleadings and Ruling to enable the court consider the same. However, if the Preliminary objection succeeds on appeal, it is likely to determine the matter in the lower court.



6. For the above reason it is the courts view that the proceedings in the lower court ought to be stayed pending determination of the appeal. However, the stay should be for limited subject to review for good reasons. Ultimately, I do grant stay of proceedings pending appeal. The stay shall run for 100 days from today. Costs in the appeal.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 15th DAY OF JULY, 2022

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

