



**Ochieng v Muchuku & 2 others (Environment & Land Case  
274 of 2014) [2022] KEELC 15391 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15391 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 274 OF 2014  
EO OBAGA, J  
DECEMBER 20, 2022**

**BETWEEN**

**PHILIP DIRO OCHIENG ..... APPLICANT**

**AND**

**PATRICK MWANGI MUCHUKU ..... 1<sup>ST</sup> DEFENDANT**

**OLIPHA SYLVIA KEMUNTO ..... 2<sup>ND</sup> DEFENDANT**

**WALTER NYABIAGE NYAKUNGU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of Notice of motion dated August 24, 2022 in which the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants seek stay of execution pending appeal. The Applicants contend that they have preferred an appeal against the judgment of this court which was delivered on July 18, 2022.
2. The Applicants contend that if stay of execution is not granted, the Plaintiff/Respondent will proceed to execute the decree and they will lose the building on the suit property which is their only source of income.
3. The Applicants' application was opposed through grounds of opposition filed on September 12, 2022 in which the Respondent contends that the Applicants' application is an abuse of the process of court and that in any case, the Applicants have not satisfied the requirements of order 42 Rule (6) of the [\*Civil Procedure Rules\*](#).
4. I have considered the Applicants' application together with the opposition to the same by the Respondent. I have also considered the submissions by the parties herein. The only issue for determination is whether the applicants' have met the threshold set out in order 42 Rule (6) of the Civil Procedure Rules.



5. The conditions for grant of stay are that an application must be brought without unreasonable delay. The Applicant must also demonstrate that he will suffer substantial loss should stay not be granted. There has also to be security given for the due performance of the decree as may ultimately be binding upon the Applicant.
6. In the instant case, the impugned judgment was delivered on July 18, 2022. This application was filed on August 29, 2022. This was slightly over one month after the judgment. The court had granted stay of execution for 30 days after judgment was delivered. I therefore find that the application was brought without unreasonable delay.
7. On whether the Applicant will suffer substantial loss, the circumstances of this case have to be considered. The Applicants have a building on the suit property. The court issued an order of eviction. If the execution was to proceed, the building may be brought down. This would amount to substantial loss. In *Butt vs Rent Restriction Tribunal* (1982) KLR 417, the court stated as follows:-
  - “ 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
  2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the Judge’s discretion.
  3. a judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
  4. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.”
8. The Applicants are exercising their right of appeal. Though the Respondent is entitled to the fruits of his judgment, the court has to ensure that the Applicants’ appeal is not rendered nugatory. I therefore find that it is necessary that stay of execution be granted.
9. I therefore grant stay of execution on condition that the Applicants deposit in court a sum of Kshs 300,000/= as security for costs within 60 days failing which the stay will automatically lapse. Costs shall be in the cause.

It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET on this 20<sup>th</sup> day of DECEMBER, 2022.**

**E O OBAGA**

**JUDGE**

**In the virtual presence of;**

**Mr Kapere for Plaintiff/Respondent**

**Court Assistant –Albert**

**E O OBAGA**



**JUDGE**

**20<sup>TH</sup> DECEMBER, 2022**

