



**Awino v Oduka & 6 others (Environment & Land Case  
578 of 2015) [2025] KEELC 1079 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1079 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 578 OF 2015**

**E ASATI, J  
MARCH 6, 2025**

**BETWEEN**

**OJWANG' BONIFACE R AWINO ..... PLAINTIFF**

**AND**

**NAM ODUKA ..... 1<sup>ST</sup> DEFENDANT**

**MARTIN OWINO ODUKA ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH OMULO OPIL ..... 3<sup>RD</sup> DEFENDANT**

**PHILIP OMOLO AIDA ..... 4<sup>TH</sup> DEFENDANT**

**OMONDI OKOTH ..... 5<sup>TH</sup> DEFENDANT**

**TOM JUMA KENYE ..... 6<sup>TH</sup> DEFENDANT**

**MARTIN JUMA NAM ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 2<sup>nd</sup> December, 2024. The application seeks for orders that:-
  - a. The honourable court be pleased to grant leave to the Applicants to file the application out of time.
  - b. The court be pleased to grant leave to the Applicant to appeal the judgement of the court delivered on September, 19<sup>th</sup> 2024 and to file Notice of Appeal and Memorandum of Appeal out of time.



- c. That court be pleased to stay execution or giving effect of the decision of Hon. Lady Justice Asati Esther delivered herein on September, 19<sup>th</sup> 2024 pending hearing and determination of the intended appeal.
  - d. The costs of the application be provided for.
2. The application was supported by the averments in the Supporting Affidavit sworn by Martin Owino Oduka on 2<sup>nd</sup> December, 2024 and the annexures thereto.
  3. The application was opposed vide the Respondent's Grounds of Opposition dated 10<sup>th</sup> December, 2024.
  4. It was submitted on behalf of the Applicants that leave to appeal was not sought at the appropriate time due to ill health of the instructing client. That time for lodging the Notice of Appeal had elapsed.
  5. That the Applicants are on the verge of being evicted from the land where they have always lived. That they will suffer loss that cannot be compensated by damages. That the Applicants have arguable appeal. That the delay was caused by the ill health of the Applicant. That only one Applicant was responsible for the matter. That the form of the application should not bar the court from granting the orders sought.
  6. On behalf of the Plaintiff/Respondent, it was submitted that an appeal lies as of right and that Defendants did not need any leave to appeal. That there is no explanation why Notice of Appeal was not lodged within 14 days from the date of the judgement. That the court will have power to grant the 2<sup>nd</sup> limb of prayer 4 but there is no explanation why Notice of Appeal was not filed within time.
  7. That if stay is to be granted, then costs of the suit once taxed be deposited in court as a pre-condition and that court may also give other conditions. That there is no reason given why the other Defendants could not act and give instructions if one of them was sick.
  8. I have considered the application, grounds of opposition and submissions.
  9. The Applicants have explained the delay in filing the Notice of Appeal by annexing to the application medical documents to show that the lead Applicant or instructing client for counsel for the Applicants was indisposed. For the interest of justice and to allow the Applicant's exercise their right to appeal, the application is hereby allowed as follows;
    - a. Leave is granted to the Applicant to lodge Notice of Appeal.
    - b. The Notice of Appeal be filed within 14 days hereof.
    - c. Execution of the judgement of this court dated 19<sup>th</sup> September, 2024 is hereby stayed pending hearing of the intended appeal to the Court of Appeal on condition that the Applicants deposit within 45 days hereof in an interest earning account in the joint names of Counsel for the parties herein the sum of Kshs.500,000/- (Kenya shillings five hundred thousand only) as security, failing which the order of stay of execution herein granted shall lapse.
    - d. Costs of the Application to the Plaintiff/Respondent.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 6<sup>TH</sup> DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**



**JUDGE.**

In the presence of:

Maureen- Court Assistant.

Odongo for Defendants/Applicants.

Orengo for Plaintiff/Respondent.

