



Otieno & another v Ombura (Environment and Land Appeal E066 of 2024) [2025] KEELC 1047 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1047 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E066 OF 2024**

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

BETWEEN

SABINA OTIENO 1ST APPELLANT

FREDRICK AYUMA 2ND APPELLANT

AND

ALFRED ABUODHA OMBURA RESPONDENT

RULING

1. The application before court for determination is the Notice of Motion dated 29th January, 2025 brought by the Appellant pursuant to the provisions of Section 1A & 1B of the [Civil Procedure Act](#) and Order 42 Rule 6(1), (2) & (6) of the Civil Procedure Rules, 2010.
2. The application seeks for an order of injunction restraining the Respondent, agents, servants, employees or any other person acting on his behalf from interfering with the Appellants' occupation of the disputed parcel of land being KISUMU/KAPUONJA/3598 whereon their homes are situated and/or stay of execution of the decree in Maseno ELC No. E010 OF 2021 do issue pending hearing and determination of the appeal herein.
3. The application was supported by the averments in the Supporting Affidavit of Sabina Otieno sworn on 29th January, 2025.
4. The application was opposed vide the Grounds of Opposition dated 13th February, 2025.
5. It was submitted on behalf of the Applicant that both the Appellants were unsuccessful in the lower court. That the judgement of the lower court directed that they be evicted from the contested portion of the suit land on which they have built their homes.
6. That if the eviction and demolition take place before the appeal is heard, the appellants will suffer substantial loss and that the appeal may be rendered nugatory. That the application has been filed



without undue delay because the period of the court vacation does not count. That the Applicants are willing to give security as the court will direct.

7. On behalf of the Respondent, it was submitted that the application was filed after much delay. That granting the order sought will amount to denying the Respondent of the fruits of the judgement, that substantial loss has not been demonstrated and that nothing has been placed before court as security. Counsel prayed that the application be dismissed.
8. I have considered the application, the grounds of opposition and the submissions made.
9. The grounds for grant of orders of stay of execution of judgements and decrees are provided for in Order 42 Rule 6(2) of the Civil Procedure Rules 2010 as follows:

“No order for stay of execution may be made under sub rule (1) unless-

 - a. The court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay and
 - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”
10. The matters of fact deposed to in the Supporting Affidavit were not controverted as no Replying Affidavit was filed. It was not denied that the Appellants have their homes on the contested portion of the suit land and that the judgement sought to be stayed directed that the Appellants be evicted therefrom. If they are evicted and demolition of their home happens, they will no doubt suffer substantial loss.
11. Regarding security, the Applicants have undertaken to abide by the directions of the court. I am satisfied that the conditions for grant of an order of stay of execution have been demonstrated.
12. The application is therefore hereby allowed in the following terms
 - i. An order of stay of execution of the decree in Maseno MELC NO. E010 OF 2021 is hereby granted pending hearing and determination of the appeal herein on condition that the applicants deposit the sum of Kshs 150,000/- being security, in an interest earning account in the joint names of Counsel for the parties herein within 45 days of today failing which the order of stay of execution herein granted shall lapse.
 - ii. Costs to abide the appeal.

Orders accordingly.

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

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Ouma Njoga for the Appellants/ Applicants.

Cheruyot h/b for Juliet Dima for the Respondent.

