



Achieng (Suing as the Lawful Attorney of Modricks Odindo Asimba) ((Suing as the Lawful Attorney of Modricks Odindo Asimba)) v Wells Oil Limited & 2 others; Ochema & another (Third party) (Environment and Land Appeal E028 of 2025) [2025] KEELC 4940 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E028 OF 2025**

E ASATI, J

JULY 3, 2025

BETWEEN

**ROSEMELL ACHIENG APPELLANT
(SUING AS THE LAWFUL ATTORNEY OF MODRICKS ODINDO ASIMBA)**

AND

**WELLS OIL LIMITED 1ST RESPONDENT
SIDIAN BANK LIMITED 2ND RESPONDENT
LAND REGISTRAR KISUMU 3RD RESPONDENT**

AND

**JOSEPH AGUNDA OCHEMA THIRD PARTY
BENARD OCHIENG OKECH THIRD PARTY**

RULING

1. This ruling is in respect of the Chamber Summons application dated 14th April, 2025 expressed to be brought pursuant to the provisions of Section 10 of the *Judicature Act* Cap 8 of the Laws of Kenya, Part 1 Rule 2(2)(a) 3(1) and (2) of the High Court Practice Rules and Section 3A of the *Civil Procedure Act*.
2. The application seeks for an order of temporary injunction and/or stay to be granted to restrain the Respondents from taking any enforcement steps or actions prejudicial to the Appellant based on or flowing from the judgement delivered in KISUMU MC ELC NO.109 OF 2019 on 7th April, 2025 pending hearing and determination of the appeal. The application also seeks for an order that costs of the application be provided for.



3. The application was based on the grounds that the Appellant has filed competent appeal raising serious, weighty and arguable questions of law and fact, that the trial court dismissed the Appellant's claim notwithstanding glaring weaknesses in the Respondents' title and total absence of proof on their part regarding root to title, that the Appellant has been in continuous possession of the suit property since 1991 and risks irreparable loss if the status quo is not preserved, that the impugned judgement is likely to embolden the Respondent to take enforcement actions that will irreversibly affect the suit property, that the appeal will be rendered nugatory if the property is alienated or the Appellant is evicted before the same is heard and determined, that the balance of convenience and interest of justice favour the grant of the orders sought, that unless this Honourable Court intervenes, the estate will be fundamentally altered, causing irreparable loss and rendering the appeal nugatory and that it is the interest of justice that the appeal be heard and determined on merit.
4. The application was supported by the averment in the Supporting Affidavit sworn by the Applicant on 14th April, 2025.
5. The application was opposed vide contents of the Replying Affidavit sworn by Jackline Ndungú.
6. I have considered the application. The Applicant seeks for an order to restrain the enforcement of the judgement of the trial. A copy of the said judgement was annexed to the supporting Affidavit. It is common ground that the judgement of the trial court was essentially a dismissal of the Appellant's claim. A dismissal order is essentially a negative order is not capable of enforcement/execution.
7. In the case of Western College of Arts And Applied Sciences Vs E P Oranga & Others [1976] KECA 15 (KLR) 63 the Court of Appeal whilst considering whether an order of stay can be granted in respect of a negative order stated:-

“But what is there to be executed under the judgment? The subject of the intended appeal the High Court has merely dismissed the suit with costs. An execution can only be in respect of costs.....”

The High Court has not ordered any of the parties to do anything or to refrain from doing anything or to pay any sum. There is nothing arising out of the High Court Judgment for this court in an application for stay to enforce or restrain by injunction.”

8. There is no evidence that any steps have been taken towards recovery of the costs awarded. There is no evidence of imminent execution.
9. The court finds that the application lacks merit. Application is dismissed. Costs to abide the appeal.
Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 3RD JULY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Okumu for the Appellant/ Applicant

Oduor for the Defendant/Respondent

