



**Okioga & another (Suing as Administrators of the Estate of Mary Kwamboka Okioga) v Kisii County Land Registrar & 3 others (Environment and Land Case 8 of 2021) [2025] KEELC 5197 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5197 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND CASE 8 OF 2021**

**M SILA, J  
JULY 8, 2025**

**BETWEEN**

**CHARLES KOMBO OKIOGA ..... 1<sup>ST</sup> PLAINTIFF  
KEFA ATANDI NYABARO ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS ADMINISTRATORS OF THE ESTATE OF MARY KWAMBOKA  
OKIOGA**

**AND**

**KISII COUNTY LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT  
CHRISTOPHER ONSONGO ..... 2<sup>ND</sup> DEFENDANT  
ZACHARY ONDIEKI ONCHURU ..... 3<sup>RD</sup> DEFENDANT  
VINCENT MACHOGU ONGARO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

(Application for stay pending appeal filed by 4<sup>th</sup> defendant; stay granted subject to conditions on deposit of monies as security and for status quo to be maintained)

1. The application before me is that dated 4 March 2025 filed by the 4<sup>th</sup> defendant. He seeks a stay of execution of the judgment pending hearing and determination of an intended appeal to the Court of Appeal. The application is opposed by the plaintiffs.
2. To put matters into context, the plaintiffs commenced this suit through a plaint which was filed on 18 March 2021. They filed this suit as legal representatives of the estate of Mary Kwamboka Okioga (deceased). They contended that the deceased was the rightful registered proprietor of the land parcel Kisii Municipality/Block I/190 having been issued with a lease by the County Council of Gusii for a



period of 99 years from 1 December 1980. They filed this suit because they found out that there was a parallel title held by the 4<sup>th</sup> defendant/applicant. This title held by the applicant was purportedly one originally issued to one Christopher Onsongo, the 2<sup>nd</sup> defendant, then transferred to Zachary John Ondieki Onchuru, the 3<sup>rd</sup> defendant, then transferred to the applicant. In the suit, the plaintiffs asked for a nullification of this title of the applicant.

3. I heard the case and held in favour of the plaintiffs. In my judgment, delivered on 19 February 2025, I found that the suit land had been allotted to Mary Kwamboka Okioga (deceased) whose estate the plaintiffs represent, and that the purported lease and subsequent title issued to the 2<sup>nd</sup> defendant was fraudulent. I held that having no title, the 2<sup>nd</sup> defendant had nothing to transfer to the 3<sup>rd</sup> defendant, and in turn, the 3<sup>rd</sup> defendant had nothing to transfer to the applicant. I ordered the Land Registrar, Kisii, to expunge the register indicating proprietorship by the 2<sup>nd</sup> – 4<sup>th</sup> defendants and reconstruct the records using the documents provided by the plaintiffs, which indicated that the proprietor of the suit land was Mary Kwamboka Okioga (deceased). I ordered the applicant to immediately give vacant possession of the suit land to the plaintiffs and issued an order of permanent injunction against the applicant restraining him from entering or dealing with the suit land. I further ordered the applicant, and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, to pay general damages of Kshs. 100,000/= for trespass, and granted costs of the suit to the plaintiffs.
4. Aggrieved, the applicant filed a notice of appeal on 28 February 2025 and followed it up with this application for stay pending appeal.
5. In the supporting affidavit to the application, the applicant avers that he has constructed a four storey building on the suit land which may be at risk of demolition unless stay is granted. He also mentions that if stay is not granted, the successful plaintiffs may deal with the suit land thus putting it beyond his reach, in the event that he succeeds on appeal. It is on these reasons that he anchors his application for stay pending appeal.
6. The application is opposed by the successful plaintiffs who filed a preliminary objection and a replying affidavit sworn by Kefa Atandi Nyabaro, the 2<sup>nd</sup> plaintiff, who is joint administrator with the 1<sup>st</sup> plaintiff in respect of the estate of Mary Kwamboka Okioga. He avers that the apprehension that the applicant has, that they will proceed to dispose of the suit land, is baseless as they have not expressed any intention of doing so. Regarding the construction, he contended that the applicant carried it out at his own risk. I have not really seen much on the preliminary objection that would be a true preliminary objection. This purported preliminary objection would probably pass for Grounds of Opposition, for in it, the plaintiffs contend that the applicant has failed to demonstrate sufficient loss, and that the appeal does not raise arguable points of law.
7. I have considered the application together with the submissions filed.
8. This is an application for stay pending appeal and I stand guided by the provisions of Order 42 rule 6 (2) of the *Civil Procedure Rules* which is drawn as follows :
  - (2) No order for stay of execution shall be made under subrule (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.



Three principles are thus fundamental, being :

1. That the application be made without unreasonable delay;
2. That the applicant do establish substantial loss;
3. That there be some security for the due performance of the decree.

9. On the first element, that of delay, I do not think that this application has been filed after unreasonable delay. The judgment was delivered on 19 February 2025 and this application was filed on 4 March 2025. On substantial loss, I am persuaded that the applicant stands to suffer substantial loss. He has indeed made some significant developments on the suit land and if stay is not granted there is risk of the same being demolished, or the plaintiffs otherwise dealing with the land, so that if he succeeds on appeal, the same may be rendered nugatory.
10. The last issue is security for the due performance of the decree. There is already judgment in favour of the plaintiffs. The applicant is supposed to give vacant possession and is also liable to pay Kshs. 100,000/= as general damages. When he testified, the applicant did acknowledge that he was developing an apartment block which was about 70% done. It was said to be four storeys tall and it is more or less within the vicinity of Kisii Town.
11. What I will order is that the status quo be maintained on the suit property on both title and possession. However, it must be appreciated that given the order of status quo, the successful plaintiffs will be unable to utilise the suit land for the duration of the appeal. As described, this is a significantly developed property more or less within Kisii Town thus the plaintiffs stand to suffer loss for not utilising this land for the duration of the appeal. They will also not be able to receive the amount of Kshs. 100,000/= granted in their favour. There is some loss that they therefore stand to suffer in case the applicant loses the appeal.
12. Weighing the above factors, and considering the size and nature of the disputed land, I am prepared to grant stay on the following conditions :
  1. That the applicant will need to deposit the Kshs. 100,000/= ordered as general damages for trespass.
  2. That the applicant will need to deposit the taxed costs.
  3. That the applicant will need to deposit the sum of Kshs. 1,000,000/= (One Million) to compensate the plaintiffs for not using the suit land for the duration of the appeal.
  4. That the above monies (i.e in 1 and 3 above) be deposited in a joint interest earning account of counsel for the applicant and the plaintiff within the next 45 days. The taxed costs be deposited in the same account within 30 days of taxation.
13. If the applicant succeeds in the appeal, the monies deposited be released to him. If he fails, the monies deposited be released to the plaintiffs.
14. In addition to the foregoing, the applicant should also not make any additional developments on the suit land and the suit land should remain in the condition that it is currently in until the appeal is heard and disposed of.



15. If the applicant abides by the above conditions, stay of execution pending appeal be granted. If not, then he will not be entitled to stay and the judgment may be executed.
16. On costs, if he abides by the above orders, costs of the application will be in the appeal. If not, then this application will be deemed as dismissed with costs to the plaintiff.
17. Orders accordingly.

**DATED AND DELIVERED THIS 8 DAY OF JULY 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Ms. Bosire for the 4<sup>th</sup> defendant/applicant

Mr. Morara Omoke for the plaintiffs/respondents

Ms. Osebe for the 1<sup>st</sup> defendant

Mr. Ochwangi for the 3<sup>rd</sup> defendant

Court Assistant : Michael Oyuko.

