



Opande & 2 others v Onyango & Wandiege (As Administrators of the Estate of John Onyango Ndege) & 4 others (Environment and Land Case 58 of 2019) [2025] KEELC 4945 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4945 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE 58 OF 2019**

**E ASATI, J
JULY 3, 2025**

BETWEEN

**LAWRENCE ODHIAMBO OPANDE 1ST PLAINTIFF
BON NGESO OPANDE 2ND PLAINTIFF
SYLVESTER OCHIENG OTIENO 3RD PLAINTIFF**

AND

**ROSE AKINYI ONYANGO & ZACHARY WANDIEGE (AS ADMINISTRATORS OF THE ESTATE OF JOHN ONYANGO NDEGE) 1ST DEFENDANT
ELIAKIM APUNDA AKECH (AS ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE ESTATE OF BENTA ACHIENG AKECH - DECEASED) 2ND DEFENDANT
SOPHIA JOYE AND LEGAL REPRESENTATIVE OF THE ESTATE OF JORAM OLANGO AYOO - DECEASED) 3RD DEFENDANT
FATUMA HASSAN SALIM 4TH DEFENDANT
ELIJA AKOMO WERE (AS ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE ESTATE OF HERINE ATIENO WERE) 5TH DEFENDANT**

RULING

1. The Notice of Motion application dated 2nd May, 2025 brought by the Defendants/Applicants seeks for an order of stay of execution and/or enforcement of the decree of this court dated 23rd January, 2025 pending hearing and determination of the Applicants' appeal.



2. The grounds upon which the application was brought are that unless the order sought is granted, the Applicants will be denied opportunity to ventilate the appeal which has high chances of success. That the Applicants stand to suffer substantial loss as the substratum of the appeal will have most probably been lost if the order is not granted.
3. The application was supported by the averment in the Supporting Affidavit sworn by one Sylvester Ochieng Otieno on 2nd May, 2025.
4. The application was opposed vide the Grounds of Opposition dated 26th May, 2025 filed on behalf of the Plaintiffs/Respondents. The Respondents' case is that the application is fatally defective, frivolous, vexatious and an abuse of the process of the court and fails to demonstrate the provisions of Order 42, Rule 6(1) & (2) of the *Civil Procedure Rules*.
5. That no appeal lies as per the provision of Order 77 Rules 1, 2 and 3 and Order 84 of the *Court of Appeal Rules*.
6. The application was heard orally on 3rd June, 2025. It was submitted on behalf of the Applicant that if there is no stay of execution, the Applicants will be evicted and the appeal be rendered nugatory. That the Applicants were willing to deposit security as will be ordered by the court.
7. That Notice of Appeal was filed on 25th January, 2025 and served upon the Respondents.
8. On behalf of the Respondents, it was submitted that the Memorandum of Appeal filed does not satisfy the *Court of Appeal Rules*. That there is no appeal filed hence the stay sought is only intended to delay the process. That the Applicants have not indicated that they are willing to provide security. That the delay of 5 months from the date of the judgement to the date of the application has not been explained. That the application is defective.
9. I have considered the application and the ground in opposition thereof. The grounds for grant of orders of stay of execution of decree/judgement are provided for in Order 42 Rule 6(2) of the *Civil Procedure Rules 2010* which provides that:
 - a. "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. Perusal of the court file shows that the Applicants lodged a Notice of Appeal dated 29th January, 2025 and duly received by the Deputy Registrar on 6th February 2025.
11. Pursuant to the provisions of Order 42 Rule 6(4), the Applicant is deemed to have filed an appeal. Order 42 Rule 6(4) provides that
 - a. "For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of Appeal has been given."
12. The Applicants have explained that execution of the judgement may result in the eviction of the Applicants. The Applicants have also undertaken to abide by the conditions on security that the court



may give. In the case of *Shell Kenya Ltd vs Benjamin Karuga Kibiru & Another* [1986] eKLR 410 the court stated that

“if it is shown that execution would render a proposed appeal nugatory then a stay can properly be granted.”

13. The court finds that the application has merit and is hereby allows it as follows:-

- a. An order of stay of execution of the judgement herein is hereby granted pending hearing and determination of the appeal to the Court of Appeal on condition that the applicants deposit the sum of Kenya shillings three hundred thousand only (Kshs 300000) as security in an interest earning account in the joint names of Counsel for the applicants and Counsel for the Respondents within 45 days of the date hereof failing which the stay of execution order herein granted shall lapse.
- b. Costs of the application to the Plaintiffs/Respondents.

Orders accordingly.

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

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

No appearance for the Plaintiffs/ Respondents.

No appearance for the Defendants/Applicants.

