



**Sigunga & another v Mitchell Parakenya Haemba Agengo (Environment and Land Appeal E002 of 2025) [2025] KEELC 5371 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5371 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND APPEAL E002 OF 2025**

**BN OLAO, J  
JULY 15, 2025**

**BETWEEN**

**EDWIN DENIS SIGUNGA ..... 1<sup>ST</sup> APPLICANT**

**PAUL OCHIENG SIGUNGA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MITCHELL PARAKENYA HAEMBA AGENGO ..... RESPONDENT**

*(Arising out of the ruling delivered on 19th December 2024 by Hon E. A. Nyaloti Chief Magistrate in Busia Chief Magistrate's Court ELC Case No E026 of 2024)*

**RULING**

1. The parties herein are litigating in the subordinate Court over the ownership of the land parcel No Marachi/Bujumba/13 (the suit land). Mitchel Parakenya Haemba Agengo (the Respondent herein and who is the Plaintiff in the subordinate Court) sought an order of temporary injunction to restrain Edwin Dennis Sigunga, Paul Ochieng Sigunga (the Appellants herein and two others as Defendants) from accessing, developing, alienating, cultivating, destroying, constructing on, fencing or doing any activities on the said suit land pending the hearing and final determination of the suit.
2. The Motion which was anchored upon Order 40 Rule 1 and Order 53 Rule 3 of the [Civil Procedure Rules](#) was heard by Hon. E. A. Nyaloti Chief Magistrate. Vide a ruling delivered on 19<sup>th</sup> December 2024 in the absence of the parties, the learned magistrate allowed the Motion. That ruling precipitated the filing of this appeal.
3. Meanwhile, the Appellants have now approached this Court vide their Notice of Motion dated 30<sup>th</sup> January 2025 and anchored on Section 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#) as well as Order 22 Rules 25, 51 and 52 and Order 51 Rule 1 of the [Civil Procedure Rules](#). They seek the following substantive orders:



1. That pending the hearing and determination of the instant appeal, this Honourable Court be pleased to issue an order staying the whole of the ruling of the Honourable Chief Magistrate E.A. Nyalotimade on 19<sup>th</sup> December 2025 in Busia ELC Case E026 of 2024.
2. That cost be in the cause.
4. The application is based on the grounds set out therein and is supported by the affidavit of Edwin Denis Sigunga the 1<sup>st</sup> Appellant herein.
5. The gravamen of the application is that the Appellants only became aware of the ruling delivered by the Chief Magistrate on 18<sup>th</sup> January 2025 as the same was never uploaded on the Case Tracking System (CTS). That to their shock the trial magistrate granted an order of temporary injunction restraining the Appellants from accessing, developing, alienating, cultivating, destroying, constructing on, fencing or undertaking any activities on the suit land pending the hearing and determination of the suit. That the said ruling has locked the Appellants' family out of their ancestral home thus subjecting them to the risk of starvation and death. That the Respondent did not demonstrate what prejudice he would suffer if the Appellants and their families continued cultivating on the suit land which they have done over the years and they would be prejudiced if the order of temporary injunction are to stand. It is therefore in the interest of justice that the order of subordinate Court is stayed.
6. The following documents are annexed to the Motion:
  1. Memorandum of Appeal dated 30<sup>th</sup> January 2025.
  2. Copy of the ruling delivered on 19<sup>th</sup> December 2024 in Busia Chief Magistrate's Court Elc Case No E026 of 2024.
7. When the Motion was placed before me for directions on 19<sup>th</sup> February 2025, I did not certify it as urgent but directed that it be served upon the Respondent within 14 days together with submissions who would have 21 days to file a response and submission. The matter would then be mentioned on 20<sup>th</sup> March 2025 to confirm compliance and take a date for ruling.
8. However, by 20<sup>th</sup> March 2025, the Appellants had only served the Respondent with the Motion without the submissions. I therefore granted the Appellants upto 3<sup>rd</sup> April 2025 to do so. It was not until 6<sup>th</sup> May 2025 that the Appellants confirmed having served their submissions. That explains why this ruling is being delivered in the new term. And notwithstanding service of the Motion and submissions upon them, the Respondents did not file any response nor submissions.
9. The Motion is therefore un-opposed.
10. Notwithstanding the fact that the Motion is un-opposed, this Court must consider it in line with the relevant laws and precedents.
11. The remedy of stay of execution pending appeal is governed by the provisions of Order 42 Rule 6(1) and (2) of the *Civil Procedure Rules* which is couched in the following terms:
  - "6  
(1) "No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem



just, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.

(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.” Emphasis mine.

It is clear from the above that to justify the grant of the orders sought, the Appellants were required to prove the following:

1. Show sufficient cause.
2. Demonstrate that unless the order for stay of execution pending is granted, they will suffer substantial loss.
3. Offer security.
4. File the application without unreasonable delay.

Before I delve into the above, the Appellants took issue with the trial Court for granting interim orders over a parcel of land whose ownership is in dispute. This is how the Appellants’ counsel has submitted in paragraph 9 of his submissions:

9: “The question is how could the magistrate proceed to give interim orders for a dispute piece of land for which no ownership documents had been presented before her?”

What the Appellants are questioning is the locus standi of the Respondent herein to file the suit in the subordinate Court over the suit land. This Court is not determining the main appeal at this stage and I have perused the impugned ruling and there is no mention of the ownership of the suit land therein or that the Respondent had approached this Court as Administrator to the Estate of his late father. However, in paragraph 6 of his plaint, the Respondent pleaded that the suit land was registered in the name of his late father whose name is given as Were Okhungo alias Jacktonein the supporting affidavit. Annexed to the Motion in the subordinate Court is a copy of the Green Card showing that the said Were Okhungo was the first registered proprietor of the suit land on 16<sup>th</sup> August 1971. It cannot therefore be true, as submitted by the Appellant’s counsel, that the trial magistrate granted injunctive orders over a parcel of land whose ownership was unknown. What was filed by the Respondent is a copy of Grant of Letters of Administration issued to him in Busia Chief Magistrate’s



Court Succession Cause No 413 of 2020 granted to him in respect of the Estate of Jactone Were Okhungo alias Were Okhungo.

12. On the issue of substantial loss, the Appellants claim that the suit land is their “ancestral home” since the 1960’s. One would have expected them to avail photographs of those homes but all that is visible from the photographs is vacant ploughed land with some houses in the background and one apparently under construction. For a parcel of land which the Appellants claim to have occupied since the 1960’s as their “ancestral home”, the Court would have expected better. It is worth noting that the Respondent’s claim in the trial Court is that the Appellants are trespassers onto the suit land. Clearly therefore, the Appellants must be having homes elsewhere and there is no evidence to prove substantial loss.
13. There is no doubt that the Appellants moved to this Court without unreasonable delay. Although the impugned ruling was delivered on 19<sup>th</sup> December 2024, they only became aware of it on 18<sup>th</sup> January 2025 and filed this Motion dated 30<sup>th</sup> January 2025. There is no unreasonable delay in the circumstances.
14. On the issue of security, the Appellants have not made any such offer nor intimated in their Motion that they are ready and willing to abide by any such order which this Court may make as a condition of granting the order of stay. As was stated in the case of *Wycliffe Sikuku Walusaka v Philip Kaita Wekesa* 2020 eKLR;

“The offer for security must of course come from the applicant himself as a sign of good faith to demonstrate that the application for stay of execution pending appeal is being pursued in the interest of justice and not merely as a decoy to obstruct and delay the Respondent’s right to enjoy the fruits of his judgment.”

In the absence of the offer of security, it must be clear that the Appellants are not deserving of the orders of stay of the ruling herein.

15. The up-shot of all the above is that the Appellants have not satisfied all the requirements of Order 42 Rule 6 of the *Civil Procedure Rules* which is a condition before any order of stay can be granted. The Court therefore makes the following disposal orders with regard to the Notice of Motion dated 30<sup>th</sup> January 2025:
  1. The Motion is dismissed.
  2. Costs to abide with the appeal.

**BOAZ N. OLAO**

**JUDGE**

**15<sup>TH</sup> JULY 2025**

Ruling dated, signed and delivered on this 15<sup>th</sup> day of July 2025 by way of electronic mail.

**BOAZ N. OLAO**

**JUDGE**

**15<sup>TH</sup> JULY 2025**

