



Odira & 2 others v Odoyo (Environment and Land Miscellaneous Application 15 of 2022) [2023] KEELC 17829 (KLR) (8 June 2023) (Ruling)

Neutral citation: [2023] KEELC 17829 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 15 OF 2022
GMA ONGONDO, J
JUNE 8, 2023**

BETWEEN

OTIENO MARIKO 1ST APPELLANT

GORDON ODIRA 2ND APPELLANT

ODERO MARIKO 3RD APPELLANT

AND

PAULVET OKEYO ODOYO RESPONDENT

RULING

1. By a Notice of Motion Application dated 2nd March 2023 and filed on 6th March 2023 (the application herein), the applicant, Paulvet Okeyo Odoyo, acting in person, is seeking the following orders;
 - a. Moot
 - b. Moot
 - c. The honourable court be pleased to issue an order vacating the orders of this court issued on the 14th February 2023.
 - d. The honourable court be pleased to issue an order allowing Paulvet Okeyo Odoyo, to proceed with the execution of the decree issued in the Civil Suit No. 10 of 2021 at the Principal Magistrate's Court at Mbita.
 - e. The costs of this application be awarded to the respondent/applicant herein.
2. The application is founded upon grounds (1) to (5) stated on the face of the same. It is further anchored on the applicant's supporting affidavit of nine paragraphs sworn on 2nd March 2023 together with the annexures thereto, as well as a further affidavit sworn on 3rd May 2023.



3. Briefly, the applicant contends that the respondents have not complied with this court's orders of 14th February 2023, wherein the court granted the respondents leave to file an appeal out of time. The court further directed the respondents' counsel to serve the requisite papers and pay requisite fees within ten (10) days from the date thereof. The applicant avers that to date, no documents have been filed and served on him. That the respondents continue to cut down the trees growing on the suit parcel of land, Kasgunga/Kamreri/2055, and using the same to make charcoal and firewood thereby destroying the suit land.
4. The application was heard by way of written submissions further to this court's directions of 6th March 2023; see Order 51 Rule 16 of the *Civil Procedure Rules*, 2010 and Practice Direction number 33 of the *Environment and Land Court (ELC) Practice Directions*, 2014.
5. Accordingly, the applicant filed submissions dated 3rd May 2023 on 6th May 2023. The applicant submitted that the respondents have a tendency to disobey court orders, as they did the same at the trial court. That the disobedience of orders of this court by the respondents was intentional, a ploy to derail the matter and frustrate the applicant's right to immediate realization of the fruits of the judgment. He urged the court to allow the instant application as prayed as the same is unopposed.
6. The respondents were duly served as disclosed in an Affidavit of Service Despite sworn on 7th March 2023 by Edwin Omondi Otieno, a licensed court process server. However, they opted not to respond to the application nor file submissions in respect to the same; see *Ogada v Mollin* (2009) KLR 620.
7. I have duly considered the application and the applicant's submissions in their entirety. The principal issues for determination are:
 - a. Whether the stay orders issued on 14th February 2023 should be vacated; and
 - b. Who should bear the costs of this application?
8. The Court of Appeal in the case of *Fred Matiang'i, The Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 Others* [2018] eKLR, stated the following with regard to orders of the court: -

“...When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities...”
9. It is my considered view that the appellant was obliged to obey the court order on conditional preservation of the suit property. See the case of *Shimmers Plaza Limited v National Bank Of Kenya Limited* (2015) eKLR where the court stated thus:-

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not.”



10. The respondents have not come to court to explain the delay and/or failure to comply with this court's orders issued on 14th February 2023. Also, since the instant application is unopposed, the averments of the applicant are treated as firm and gospel truth.
11. Additionally, the right of appeal must be balanced against an equally weighty right of the plaintiff to enjoy the fruits of the judgment delivered in his favour; see *Mohammed Salim t/a Choice Butchery v Nasserpuria Memon Jamat* (2013) eKLR where the Court upheld the decision of *Portreitz Maternity v James Karanga Kabia* Civil Appeal No. 63 of 1991 and stated that:

“...That right of appeal must be balanced against an equally weighty rigid right that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right.”
12. It is my considered view that on a balance of interests, the applicant herein is likely to be prejudiced more than the respondents if this court's orders of 14th February 2023 are not vacated.
13. It is a fundamental principle that the court should take the lower risk of injustice; see *Films Role International Ltd.v Cannon Film Sales Ltd.* (1986) ALL ER 772.
14. To that end, I find the applicant's application dated 2nd March 2023 and filed herein on 6th March 2023 merited. The same is hereby allowed in terms of prayers 3, 4 and 5.
15. It is so ordered.

DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 8TH JUNE 2023.

G.M.A ONGONDO

JUDGE

Present

1. Applicant, in person
2. Okello, Court Assistant

