



**Omukaya v Ochanda & another (Environment and Land Appeal  
E001 of 2023) [2023] KEELC 17980 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17980 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT AND LAND APPEAL E001 OF 2023**

**E ASATI, J**

**JUNE 8, 2023**

**BETWEEN**

**MARGARET OTIENO OMUKAYA ..... APPELLANT**

**AND**

**DOREEN OCHANDA ..... 1<sup>ST</sup> RESPONDENT**

**DAMARIS ODHIAMBO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal against the Judgement of the Senior Resident  
Magistrate Hon. Rose M. Ndombi delivered on 12/1/2023)*

**RULING**

1. This ruling is in respect to the Respondents' application vide the Notice of Motion dated February 28, 2023 stated to be brought pursuant to the provisions of Order 40 Rule 2(1) and (2) of the [Civil Procedure Rules](#), section 1A and 1B of the [Civil Procedure Act](#) and article 44 and 159 of the [Constitution of Kenya 2010](#). The application sought for orders that the Appellant be ordered to deposit a sum of Kshs 100,000/- as security before the commencement of the appeal and costs.
2. Direction were taken, by consent of the parties, on March 6, 2023 that the application and the appeal be canvassed together by way of written submissions within given timelines.
3. The application seeks for an order that the Applicant be ordered to deposit a sum of Kshs 100,000/- as security before the commencement of the appeal and that the order do remain in force until hearing and determination of the appeal. The application was brought on grounds that the orders sought are in the best interest of justice. The requirement for provision of security is contained in Order 42 Rule 6 (2) (b) of the [Civil Procedure Rules](#). The requirement is for provision of such security as the court orders for the due performance of such decree or order as may ultimately be binding on an applicant in an application for stay of execution of the decree or order appealed against pending appeal. It is as a condition for grant of an order of stay of execution pending appeal. In this case, there was no



application by the Appellant for orders of stay of execution pending appeal and hence the requirement for provision of security is not applicable. And now that the judgement in respect of the appeal is being delivered on the date of this ruling, the requirement for provision of security is overtaken by events.

4. The upshot is that the application is declined. No order as to costs.

It is so ordered.

**RULING, DATED AND SIGNED AT VIHIGA, READ IN OPEN COURT THIS 8<sup>TH</sup> DAY OF JUNE 2023.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

Neville- Court Assistant.

The Respondents in the appeal/Applicants-present in person

Malanda holding brief for Musiega for the Appellant/Respondent in the application.

