



REPUBLIC OF KENYA



**KENYA LAW**  
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**Osodo v Osodo (Civil Appeal E053 of 2024) [2025] KEHC 5831 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5831 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E053 OF 2024**

**WM MUSYOKA, J**

**MAY 5, 2025**

**BETWEEN**

**DR BONIFACE OKUMU OSODO ..... APPELLANT**

**AND**

**CHRISTIAN SIMIGINI OSODO ..... RESPONDENT**

*(an appeal arising from orders made in the ruling of Hon. Anne Karimi Njeru, Senior Resident Magistrate, SRM, in Port Victoria SRMCCC No. E001 of 2024, of 17th September 2024)*

**RULING**

1. The appeal herein arises from a decision of the trial court, in Port Victoria SRMCCC No. E001 of 2024, of 17<sup>th</sup> September 2024.
2. The grounds of appeal revolve around the trial court transmuting the nature and substance of the suit from orders on protection, on account of threats to and actual attempts to the life of the appellant, to one about rights over land; addressing, at interlocutory stage, matters that should have been addressed at the full trial; the court not understanding that Bunyala/Mudembi/3129 was not the primary subject-matter of the suit and was an ancestral home; the trial court erring in finding that the appellant was entitled to protection from threats and attempts on his life; and the trial court ignoring the pleadings and evidence presented by the appellant. It is sought that the appeal be allowed, the orders made on 17<sup>th</sup> September 2024 be set aside, and the appellate court make such orders as it shall deem fit.
3. The cause, in Port Victoria SRMCCC No. E001 of 2024, was at the instance of the appellant, against the respondent. The appellant is the father of the respondent. There is a lot that is said in the plaint, dated 22<sup>nd</sup> May 2024, but what is relevant, to the prayers sought in the plaint, is that the respondent had allegedly gone to the home of the appellant, at Bunyala/Mudembi/3129, and threatened to kill him, and a report was made at Ruambwa Police Station. It is averred that there were attempts, previously, to kill him, on 4<sup>th</sup> May 2024 and 19<sup>th</sup> October 2017. The principal order, sought in the suit, is for a permanent order of injunction, to restrain the respondent from “further interfering, entering, visiting,



threatening to kill and engaging in forceful entry into the Plaintiff's home in Bunyala/Mudembi/3129 ... against the Plaintiff's wish and consent.”

4. The plaint was lodged at the registry simultaneously with a Motion, dated, 22<sup>nd</sup> May 2024. The said Motion is a replica of the plaint, for it merely regurgitates, word for word, the averments made in the plaint. The principal prayer is that a temporary order be made, mirroring the permanent injunction order made in the plaint.
5. The respondent replied to the Motion, to disclose that there had been litigation between the parties in other suits, and that Bunyala/Mudembi/3129 was ancestral land, to which he claimed entitlement, based on culture and other factors, to access, on account of the marriage between his mother and the appellant. He annexed a judgement, in Ukwala SRMCCC No. 65 of 2017, a suit by the appellant against him, which had sought to restrain him from trespassing on a piece of land located in Siaya County, and which was dismissed, grounded on rights emanating from the *Children's Act*, Cap 141, Laws of Kenya, and the *Constitution*.
6. The application, in Port Victoria SRMCCC No. E001 of 2024, was initially placed before Hon. SC Tirop, Resident Magistrate, RM, as a small claims matter, also identified as MCCCOMMSU/E001/2024, in her capacity as adjudicator. Hon. Tirop, RM, recused herself from it, on grounds of jurisdiction, as, according to her, it touched on the issue of land. She directed that the same be placed before Hon. Njeru, SRM, in her capacity as head of station.
7. The matter was placed before Hon. Njeru, SRM, on 25<sup>th</sup> June 2024. The appellant was not in attendance, on that date, and the respondent proposed reference of the matter to mediation. It was mentioned again on 16<sup>th</sup> July 2024, when the appellant attended court, and indicated that he was not interested in the mediation proposed. The court directed that the application, dated 22<sup>nd</sup> May 2024, be canvassed by written submissions.
8. The trial court ruled on that application on 17<sup>th</sup> September 2024. The court found that the appellant had conceded, in his written submissions, that the land was ancestral, and, based on that, he could not keep his son away from the land. The court wondered how it would protect the appellant, fundamentally, as the appellant had not demonstrated that the respondent had been convicted of a crime. It was concluded that no prima facie case had been made out for grant of the order sought.
9. The appellant was aggrieved by the ruling delivered on 17<sup>th</sup> September 2024, and brought the instant appeal, to challenge the orders made in that ruling, founded on the grounds that I have set out in paragraph 1 of this judgement.
10. What I am called upon to determine, at this stage, is an interlocutory application, dated 29<sup>th</sup> September 2024. It principally seeks stay of proceedings in Port Victoria SRMCCC No. E001 of 2024 or MCCCOMMSU/E001/2024 pending hearing and determination of the appeal herein. It is principally argued that, should the proceedings before the trial court be concluded, the appeal would be rendered nugatory.
11. The respondent has replied to the application. His affidavit was sworn on 7<sup>th</sup> November 2024. He argues that it is incompetent and an abuse of the court process. He argues that no sufficient cause has been raised for grant of the order. He submits that no material has been placed before the court that his behaviour, post the ruling, points to him threatening or endangering the life of the appellant. He points to the delay likely to be occasioned by the stay order, and that the issue before the trial court related to land, and jurisdiction lay elsewhere.



12. Directions were taken, on 10<sup>th</sup> February 2025, for canvassing of the application, dated 29<sup>th</sup> September 2024, by way of written submissions. I have seen, from the record, written submissions by both sides.
13. In his written submissions, the appellant has cited *William Odhiambo Ramogi & 2 others v. The Attorney General & 3 others* [2019] eKLR (Achode, J. Ngugi, Nyamweya, Ogola & Mrima, JJ), on stay of proceedings, where the court summarised the earlier pronouncements on the same by the superior courts. 6 principles were identified. There must be an appeal pending at a higher court, the applicant should explain why stay was not sought at the higher court where the appeal is pending, it must be demonstrated that the appeal raises substantial questions to be determined or is otherwise arguable, it must be demonstrated that the appeal would be rendered nugatory should stay of proceedings be not granted, exceptional circumstances must be demonstrated as to why the proceedings should be stayed instead of all the issues being argued before the appellate court in the appeal, and the stay application should have been filed expeditiously and without delay.
14. It is submitted that the appellant had filed an appeal, from the impugned ruling, and, therefore, the first test has been met. He submits that the second principle does not apply. He submits that the third principle is met, to the extent that the appeal raises substantial questions for determination by the High Court, for the trial court had ventured to determine, at an interlocutory level, issues that ought to have been addressed at the main hearing. On the fourth limb, it is submitted that the appeal would be rendered nugatory, should the proceedings at the trial court continue to finality, during the pendency of the appeal. On the fifth principle, it is submitted that there exist real and exceptional circumstances, that warrant stay of proceedings, particularly concerning misgivings by the appellant on application of the law at an interlocutory stage. Finally, with respect to the last limb, it is submitted that the application was brought with due expedition and without delay.
15. In addition, *Kiu & another v. Khaemba & 3 others* [2021] KECA 318 (KLR) (Nambuye, JA), *Airland Tours & Travels Limited v. National Industrial Credit Bank* [2006] KEHC 1591 (KLR) (F. Ochieng, J) and *John Nduva Wambua & another v. Kioko Makaya* [2019] eKLR [2019] KEHC 11648 (KLR) (Odunga, J) are cited, to support those submissions.
16. The respondent submits on 2 points, jurisdiction and stay of proceedings. On jurisdiction, it is argued that the High Court would have no jurisdiction over the matter, for the issue is about an injunction to restrain the respondent from accessing land. Article 162(2) of the *Constitution* and section 13(2)(d)(e) of the *Environment & Land Court Act*, Cap 8D, Laws of Kenya, are cited. On stay of proceedings, *Turbo Highway Eldoret Limited v. Muniu* [2021] KEHC 10197 (KLR)(JM Ngugi, J) is cited, for the argument that stay of proceedings should be granted upon demonstration that exceptional circumstances exist to warrant it. It is submitted that that had not been demonstrated.
17. The application before me is in respect of stay of proceedings, and I believe that that is the only issue before me at this stage. There is a jurisdiction element, though, but I believe that should be for determination in the main hearing. My understanding of the dispute, at the trial court, is that the appellant is concerned about his personal security, and, in connection with that, he moved the trial court for protection, from the respondent, and, as part of the protection sought, he would like orders limiting access of the respondent to land that he, the appellant, claims to be his residence. Whether that residence is on ancestral land, or is matrimonial property, to which the respondent is entitled access, are not issues for determination at this stage. There is an element of lack of neatness, in the way the pleadings were done, so that issues were raised in a manner that appeared to spawn or spread over pure civil matters and land matters, creating some measure of uncertainty. However, those are issues to be argued in the main appeal.



18. Has the applicant met the test, set in *William Odhiambo Ramogi & 2 others v. The Attorney General & 3 others* [2019] eKLR (Achode, J. Ngugi, Nyamweya, Ogola & Mrima, JJ)? I believe that he has. He has placed on record material to demonstrate that there is an appeal that he has filed, which is pending. The appeal has substantial issues for determination. Some of them are whether the suit is purely about personal protection or land or both, the scope of personal protection that a court can direct to be provided to an individual, and jurisdiction of the trial court and the High Court over the matter. The appeal would, no doubt, be rendered nugatory, should the matter before the trial court be concluded ahead of the appeal. Exceptional circumstances appear to exist, as it is being argued that the trial court has made conclusions, at the interlocutory stage, with some element of finality, which could prejudice or imperil the position of the appellant at the main trial. The appeal was filed with expedition, and without delay.
19. Consequently, I do hereby allow the application, dated 29<sup>th</sup> September 2024, in terms of prayer 3 thereof. Let the appellant file and serve his record of appeal, within 30 days of delivery of this ruling. The matter shall be mentioned, on 5<sup>th</sup> June 2025, for directions on the disposal of the appeal. The costs of the application shall abide the outcome of the appeal. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT NAIROBI, THIS 5<sup>TH</sup> DAY OF MAY 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Barrack, instructed by Kendi & Company, Advocates for the appellant.

Mr. Okanda, instructed by Otieno Okanda & Company, Advocates for the respondent.

