



REPUBLIC OF KENYA



**Obare & another v Opondo (Civil Appeal E023 of 2025)
[2025] KEHC 9828 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9828 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E023 OF 2025**

WM MUSYOKA, J

JULY 4, 2025

BETWEEN

CATHERINE ADHIAMBO OBARE 1ST APPELLANT

NEWTON ROLF ODONGO 2ND APPELLANT

AND

COSMAS ODUOR OPONDO RESPONDENT

*(Appeal from orders made in ruling by Hon. Kassim Akida, Resident
Magistrate/Adjudicator, in Busia SCCC No. 272 of 2024, on 3rd April 2025)*

RULING

1. The Motion, dated 4th April 2025, seeks stay of execution of a decree passed in Malaba SCC COM No. E272 of 2025.
2. A copy of the decree or order that I am being invited to stay has not been exhibited. I do not know whether that decree or order exists. I run the risk of staying a non-existent order. I should not act in vain.
3. Attaching the decree or order sought to be stayed is critical. It goes to jurisdiction. The jurisdiction to stay the decree or order stems from the order itself. Where that order or decree does not exist, there would be no jurisdiction to exercise discretion to stay a non-existent order or decree. To unlock exercise of the jurisdiction and discretion, it must be established that there exists a decree or order capable of being executed and appealed against.
4. Secondly, grant of a stay order is discretionary. The stay is of an order or decree made in exercise of some discretion. To enable the court, consider a stay application, it ought to be demonstrated that the other court exercised discretion improperly. That can only be demonstrated where the ruling or judgement, giving rise to the impugned decree or order, is exhibited; to bring out how the trial court handled the



exercise of discretion. I have no ruling or judgement before me. I have no basis of evaluating whether discretion should be exercised to grant stay, and, if it should, to guide me on how to exercise it.

5. I am being invited to leap into the dark. I decline that invitation.
6. The Motion, dated 4th April 2025, is devoid of merit. It is for dismissal, and I hereby dismiss it. The interim stay order, granted on 28th April 2025, is hereby discharged. Orders accordingly.

DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 4TH DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ipapu, instructed by Ipapu P. Jackah & Company, Advocates for the Appellants.

