



**Odero & 2 others v Nyambutue (Civil Appeal E015 of 2022)
[2024] KEHC 769 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E015 OF 2022
RE ABURILI, J
FEBRUARY 1, 2024**

BETWEEN

LEONARD ODHIAMBO ODERO 1ST APPELLANT

ANDREW MUKELE OTUCHI 2ND APPELLANT

PAUL WAITITU NDUNGU 3RD APPELLANT

AND

PAULUS OUMA NYAMPUTUE RESPONDENT

RULING

1. On 1st December 2023, this court admitted this appeal to hearing after receiving the trial court file. The court then directed the Appellant to file and serve a record of appeal within 21 days thereof together with written submissions and the Respondent to file and serve submissions within 10 days of date of service.
2. This appeal is for mention today to confirm compliance and to fix a judgment date. It is now 10.20am and only the Respondent's counsel Mr. Maube is present.
3. The e-filing portal has been checked and no record of appeal or submissions have been filed or served.
4. This appeal, upon being filed, a stay of execution was granted on condition.
5. A Bank Guarantee dated 19th May 2022 No. Ref. 00xxxxxxxxxx issued by Family Bank for Kshs.500,000 (Five Hundred Thousand) was deposited as security for due performance of decree as the other Kshs.500,000 was paid to the Respondent's counsel.
6. As the Appellant has not complied with this court's direction given on 1st December 2023 and served via email on 5th December 2023, I hereby dismiss this appeal for non compliance with the court's directions served on 5th December 2023 and vacate the conditional stay of execution orders granted



by this court and order that Family Bank do pay to the Respondent's advocate Maube Muyeya & Associates who are on record for the Respondent, the sum of Kshs.500,000 the amount in the Bank Guarantee No. Ref. 00xxxxxxxxx dated 19th May 2023, upon service of this order upon the said Bank.

7. Each party shall bear their own costs of this appeal as dismissed and the file is closed.
8. This Ruling and order to be typed forthwith.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 1ST DAY OF FEBRUARY, 2024

R.E. ABURILI

JUDGE

