



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT BUSIA**

**ELC CIVIL CASE NO. 74 OF 2018**

**JUSTUS ATSIENO ODHIAMBO.....PLAINTIFF**

**= VERSUS =**

**PETER ONYANGO ACHIENG.....DEFENDANT**

**R U L I N G**

1. The Plaintiff/Applicant brought an application dated 19<sup>th</sup> July 2021 under Order 42 of the Civil Procedure Rules, 2010 and section 3A of the Civil Procedure Act and all other enabling provisions of the law seeking for the following orders;

**a) Spent**

**b) Spent**

**c) That Honourable Court be pleased to grant a stay of execution of the Decree and all consequential orders granted on 21<sup>st</sup> day of April, 2021 pending hearing and determination of the appeal.**

**d) That the Honourable Court be pleased to make any other suitable orders**

**e) That the costs of this application be in the appeal.**

2. The application is supported by the grounds on the face of it and the affidavit of Justus Atsieno Odhiambo;

*a) That the applicant has an arguable appeal with overwhelming chances of success.*

*b) That there has been no delay in bringing this application.*

*c) That the applicant is willing to abide by any conditions and terms as the court may deem fit and just to impose.*

*d) That the applicant stands to suffer irreparable loss in the event the Respondent sells, charges or disposes off the land to a third party.*

3. The court notes that this date for confirming filing of submissions was fixed by the plaintiff/applicant who is absent. Although the parties have filed their submissions, the Honourable Court perused the application and note that the orders sought cannot be granted. The plaintiff's suit was dismissed and judgment entered in the counter-claim. The applicant cannot get stay of dismissal of their suit. The orders allowing the counter-claim are likely to infringe on the Applicant's rights since the defendant was granted orders of vacant possession.

4. In view of the above and to fast track the Appeal, the applicant is granted a stay of execution for a period of one hundred and twenty days (120 days) to appropriately move the court of appeal. The stay of execution granted by this court is therefore for a period of 120 days. Costs of the application awarded to the defendant/respondent. In addition, the respondent to extract the order to serve on the applicant and the 120 days to run from the date the order is served.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2021.**

**A. OMOLLO**

JUDGE