



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT HOMABAY

ELC APPEAL CASE NO. 01 OF 2021

SOLOMON OMOLO OCHUODHO.....APPELLANT

VERSUS

MOSES ODHIAMBO ACHACHA.....RESPONDENT

(Being an appeal from the Ruling of the Principal Magistrate's court at

Oyugis delivered on 25/8/2021 in OYUGIS PMC NO. 14 OF 2020-HON. B.O OMWANSA)

RULING

1. By a Notice of Motion dated 3rd September 2021, mounted under order 42 rule 6 of the Civil Procedure Rules, Order 51 of the Civil Procedure Rules 2010. (The application), one Solomon Omolo Ochuodho, the appellant/applicant through M/S. Ngala Awino and Company Advocates, has sought the orders infra:

a) Spent

b) Spent

c) **THAT** this Honourable Court be pleased to grant an order of stay of execution of the Ruling delivered on 25th August, 2021 and all consequential orders arising therefrom pending the hearing and determination of the appeal.

d) **THAT** the costs of the application be provided for.

2. The application is anchored on the applicant's 12-paragraphed supporting affidavit sworn of even date and grounds, 1 to 7 set out on its face and the annexed memo of appeal of even date. The applicant complains, inter alia;

“THAT the appeal raises weighty and triable issues for determination and has high chances of success.”

3. Mr. G.S Okoth the learned Counsel for the respondent Moses Odhiambo Achacha, filed grounds of opposition dated 25th October, 2021 to the application. Today, counsel told the court that there is no intention on the part of the respondent to execute the trial court's ruling delivered on 25th August, 2021. That status quo thereof be maintained.

4. Mr. Bisembe holding brief for Mr. Ngala Awino learned Counsel for the appellant, has affirmed the position by the respondent's counsel.

5. Upon hearing counsel for the respective parties herein and pursuant to section 13(7)(a) of the Environment and Land Court Act, 2015(2011), the court of Appeal decision in the case of *Butt versus Rent Restriction Tribunal (1979)* eKLR as well as , the case of *Ogada versus Mollin (2009)* KLR 620, alongside Practice Direction No 32 of the Environment and Land Court Practice Directions, 2014, I hereby order thus:

a) Order No. 3 sought therein as stated in paragraph 1(c) herein above is allowed accordingly.

b) The appellant's counsel to file and serve the record of appeal within 30 days from this date.

c) The Deputy Registrar of this court to call for the original record and certified copies of proceedings and ruling from the trial court urgently.

d) The appeal is fixed for further orders and directions on 2nd February, 2022.

e) It is so ordered.

G.M.A ONG'ONDO

JUDGE

RULING DELIVERED, SIGNED AND DATED AT THE ENVIRONMENT AND LAND COURT AT HOMA-BAY ON THIS 10TH DAY OF NOVEMBER, 2021.

In the presence of:

1. Mr. Bisembe holding brief for Ngala Awino learned counsel for appellant.
2. Mr. G.S Okoth learned counsel for respondent
3. Court Assistant: Okello.

G.M.A ONG'ONDO

JUDGE