



**Okendo v Oyuko & 2 others (Environment and Land Appeal
E024 of 2022) [2025] KEELC 4845 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4845 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E024 OF 2022**

**E ASATI, J
JUNE 26, 2025**

BETWEEN

SAMSON ANGAGA OKENDO APPELLANT

AND

CHRISTINE OYUKO 1ST DEFENDANT

GAUDENCIA JUMA OKIRI 2ND DEFENDANT

CHUNGA OKIRI 3RD DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 25th March, 2025 brought by the Appellant pursuant to the provisions of Order 42 Rule 6 of the *Civil Procedure Rules* 2010 and sections 3 and 3A of the *Civil Procedure Act*. The substantive prayer sought is for an order of stay of execution of the judgement and further proceedings herein pending hearing and determination of an intended appeal.
2. The grounds upon which the application was brought are that the Appellant has lodged a Notice of Appeal. That the Applicant has stayed on the suit land since birth and interred the remains of his kin thereon and that the action of the Respondents to evict him would be detrimental. That the intended appeal which raises serious legal issues will be rendered nugatory if the orders sought are not granted. That the Applicant stands to suffer irreparable loss and damage and that he is ready to abide by any condition as shall be set out by the court. The application was supported by the contents of the Supporting Affidavit sworn by the Appellant/Applicant on 25th March, 2025.
3. The application was opposed vide the contents of the Replying Affidavit sworn by the 1st Respondent on 5th May, 2025. The Respondent's case is that the Appellant/Applicant has not come to court with clean hands as he has cut down trees on the suit land. That Counsel filing the application for the Appellant did not seek leave to come on record. That the Applicant has not demonstrated how he will



suffer if the orders sought are not granted and that the application was brought after much delay. That the application is meant to delay the Respondents from benefitting from the judgement of the trial court and to frustrate the rights of the Respondents. The 1st Respondent urged the court to dismiss the application with costs.

4. It was submitted on behalf of the Applicant that the Applicant had demonstrated that he will suffer substantial loss as the suit land is family land owned by the Appellant. That the appeal will be rendered an academic exercise if the orders sought are not granted. That the Appellant is willing to provide security. That the Respondent will not suffer any prejudice by grant of the orders sought.

The Respondent relied on her Replying Affidavit.

5. I have considered the application, the grounds in support thereof and the contents of the Replying Affidavit.
6. What the Applicant seeks to stay is his eviction by the Respondents from the suit land. However, no order of eviction was issued in the Judgement of this court dated 6th June, 2024. The Judgement only dismissed the appeal filed by the appellant and awarded costs to the Respondent. The order in the Judgement was therefore a negative order incapable of execution, save for recovery of costs. There is no evidence of any imminent execution for recovery of the costs.
7. The application also seeks for stay of proceedings. This being a matter finalized and judgement delivered, there are no ongoing proceedings to be stayed.
8. The Respondent averred that Counsel who has filed the application has not sought leave to come on record. Perusal of the court record shows that the Appellant was represented by the firm of Otieno Aluoka & Company Advocates in the appeal. It is the same firm of Advocates who drew and filed the Memorandum of Appeal in respect of the appeal and represented the Appellant up to 6th June, 2024 when the judgement was delivered. The present application has been filed by the firm of Juliet Dima & Associates. Perusal of the court record reveals no compliance with the provisions order 9 Rule 9 [Civil Procedure Rules](#) before filing the application. Order 9 Rule 9 requires that when there is a change of Advocates or when a party decides to act in person having previously engaged an advocate, after judgement has been passed, such change or intention to act in person shall not be effected without an order of the court obtained either upon an application with notice to all the parties or upon consent between the outgoing advocate and the incoming advocate or the party intending to act in person.
9. The court also notes that the application was filed about 9 months from the date of the judgement. This delay has not been explained and was unreasonable in the circumstances.
10. For the foregoing reasons the court finds that the grounds for granting of an order of stay of execution under Order 42 Rule 6 have not been demonstrated. The application was filed after unreasonable delay.
11. The application is hereby dismissed. Costs to the 1st Respondent.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 26TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE

In the presence of:-

Maureen: Court Assistant.



Kwaro for the Appellant/ Applicant.

1st Respondent present in person.

