



**Ombe & another (Suing as Administrator of the Estate of Stephen Abur Ombe (Deceased)) v Sule (Sued in his Capacity as the Administrator of the Estate of Richard Sule Awili (Deceased)) (Environmental and Land Originating Summons E007 of 2023) [2025] KEELC 4844 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4844 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023**

**E ASATI, J**

**JUNE 26, 2025**

**BETWEEN**

**MARGARET O OMBE ..... 1<sup>ST</sup> APPLICANT**

**GILBERT O ABUR ..... 2<sup>ND</sup> APPLICANT**

**SUING AS ADMINISTRATOR OF THE ESTATE OF STEPHEN ABUR OMBE  
(DECEASED)**

**AND**

**JARED NYAGWETH SULE ..... RESPONDENT**

**SUED IN HIS CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF  
RICHARD SULE AWILI (DECEASED)**

**RULING**

1. The Notice of Motion dated 28<sup>th</sup> March 2025, expressed to be brought pursuant to the provisions of Order 42 Rule 6 Civil Procedure Rules 2010 and sections 1A and 3B of the Civil Procedure Act was filed on behalf of the Applicants seeking for an order of temporary stay of execution of the judgement and consequential orders of this court delivered on 7<sup>th</sup> November, 2024 in KISUMU ELC E007 OF 2023 (OS) pending the hearing and determination of the appeal being Kisumu Court of Appeal Civil Appeal No.E028 OF 2025, an order that the OCS Nyamasaria Police Station to enforce the order and that costs of the application be provided for.
2. The application was based on the grounds that on 7<sup>th</sup> November, 2024, the honourable court dismissed the instant suit, filed by the Applicants herein. That the Applicants have lodged an appeal being KISUMU Court of Appeal Civil Appeal No. E028 OF 2025 which is yet to be determined. That the Respondent and his agents have moved to evict and or interfere with the peaceful existence of the



- Applicant and his tenants without obtaining proper orders of eviction. That unless the honourable court intervenes, the appeal will be rendered nugatory.
3. The application was supported by the averments in the Supporting Affidavit of Gilbert Odhiambo Abur sworn on 28<sup>th</sup> March, 2025.
  4. The application was opposed vide the averment in the Replying Affidavit sworn by the Respondent on 14<sup>th</sup> April, 2025.
  5. The application was heard by way of oral submissions. It was submitted on behalf of the Applicant that the application was brought pursuant to the provisions of Order 42 Rule 6 Civil Procedure Rules. That if the orders sought are not granted, the appeal will be rendered nugatory.
  6. That the Applicant stands to suffer substantial loss. That the application has been made without unreasonable delay. That the Respondent stands to suffer no harm if the orders sought are granted.
  7. Counsel relied on the cases of Butt -vs- Rent Restriction Tribunal and Jaber Mohsen Ali & another -vs- Priscilla Boit & another [2014]eKLR on the grounds for grant of orders of stay of execution.
  8. On behalf of the Respondent it was submitted that there is no form of execution being undertaken by the Respondent. That the judgement dismissed the suit so there is nothing to stay.
  9. I have considered the application. I have also perused this court's judgement whose execution is sought to be stayed. I have noted, as submitted on behalf of the Respondent, that the judgement only dismissed the Applicants' suit with costs to the Respondent. No eviction order was given in the judgement.
  10. The Applicants' main grievance in the present application is that the Respondent is taking steps to evict him in the pendency of the appeal to the Court of Appeal. However, given the nature of the judgement, it is clear that any steps taken towards eviction are not in execution of the judgement.
  11. In the case of Western College of Arts And Applied Sciences Vs Oranga & Others [1976] KLR 63 the Court of Appeal whilst considering whether an order of stay can be granted in respect of a negative order stated:-

“ But what is there to be executed under the judgment, the subject of the intended appeal. The High Court has merely dismissed the suit with costs. An execution can only be in respect of costs.....”

The High Court has not ordered any of the parties to do anything or to refrain from doing anything or to pay any sum. There is nothing arising out of the High Court Judgment for this court in an application for stay to enforce or restrain by injunction.”

12. And in David Kipruto Chingi & Another vs Director of Public Prosecutions & 2 Others [2016] eKLR where the Court observed that an application seeking stay of execution of a negative order was bound to fail and proceeded to dismiss the application.
13. For the foregoing reasons the court finds that the application lacks merit and hereby dismisses it. Costs to the Respondent.

Orders accordingly.

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

**E. ASATI,**



**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Ominah for the Applicants.

Kouko for the Defendant/Respondent.

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