



Akumu & 2 others v Akumu & 2 others (Environment and Land Case E043 of 2023) [2025] KEELC 6881 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6881 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E043 OF 2023**

E ASATI, J

OCTOBER 9, 2025

BETWEEN

**MONICA AKINYI AKUMU 1ST APPELLANT
TOM MBOYA AGUMBI 2ND APPELLANT
SAMSON NYALIK ALING 3RD APPELLANT**

AND

**JOSHUA ODINGO AKUMU 1ST RESPONDENT
COUNTY LAND REGISTRAR, KISUMU 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. This ruling is in respect of the Notice of Motion application filed on behalf of the Appellants and expressed to be brought pursuant to the provisions of Order 42 Rule 6(1) and Order 40 Rule 1 of the Civil Procedure Rules.
2. Prayers 1 and 2 of the application having been spent, the outstanding prayers are prayers 3 and 4 thereof. Prayer 3 seeks for an order of stay of execution of the judgement and decree of the Honourable V. Adhiambo (Senior Resident Magistrate) in Kisumu MC ELC No.E019 of 2024 delivered on 20th May, 2025 pending hearing of the appeal and prayer 4 seeks for costs of the application to be provided for.
3. The application was supported by the averments in the Supporting Affidavit sworn by the 1st Appellant on 6th June, 2025 an the annexures thereto.
4. The application was opposed by the 1st Respondent vide the contents of the Replying Affidavit sworn by the 1st Respondent on 27th June, 2025.



The application was heard on 30th June, 2025.

5. The substantive prayer sought in the application is for an order of stay of execution of the judgement of the trial court pending hearing and determination of the appeal herein.
6. I have considered the application, the grounds in support and in opposition thereof. I have also considered the submissions made.
7. One of the grounds upon which the application was opposed was that the application is incompetent for the reason that Counsel filing the application is not properly on record.
8. It was not contested that Counsel acting for the applicant herein was not the same Counsel representing the party before the trial court. There has been no demonstration of compliance with order 9 of the Civil Procedure Rules, 2010. Though Counsel for the applicant submitted that proceedings on appeal are a separate case hence the provisions of Order 9 do not apply, I find that the provisions of Order 9 Rules 9 and 13 (1) of the Civil Procedure Rules 2010 are to the contrary. Counsel ought to have complied. For this reason, the application is incompetent and is hereby struck out. Costs to the 1st Respondent.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 9TH DAY OF OCTOBER, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

Odeny for the Appellants/ applicants.

Lore for the 1st Respondent.

