



**Odhiambo v Machinji (Suing as the Director of Katiti Builders) (Environment and Land Appeal E024 of 2024) [2025] KEELC 6887 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6887 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ENVIRONMENT AND LAND APPEAL E024 OF 2024**  
**E ASATI, J**  
**OCTOBER 9, 2025**

**BETWEEN**

**FREDRICK ONYANGO ODHIAMBO ..... APPELLANT**

**AND**

**MACTILDA KHATITI MACHINJI ..... RESPONDENT**

**SUING AS THE DIRECTOR OF KATITI BUILDERS**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 10<sup>th</sup> September, 2025 brought by the Appellant seeking for orders that;
  - a. The Honourable Court be pleased to issue an order of stay of execution and categorically the eviction ordered by the court at Maseno Senior Principal Magistrate pursuant to the success of the application in Maseno SPMC ELC NO.E005 Of2022 delivered by Hon. Melanie Ochieng on the 3<sup>rd</sup> September, 2025.
  - b. The Applicant herein be allowed to settle the decree in instalment and/or in a reviewed position by the Honourable court.
  - c. That the costs of the application be provided for.
2. The application was supported by the contents of the Supporting Affidavit of Fredrick Onyango Odhiambo sworn on 10<sup>th</sup> September, 2025.
3. The Applicant's case is that the Applicant was never served with process in regard to the application conducted as Maseno MC ELC NO.3005 of2025 thus he was condemned unheard as he did not attend the process. That the Applicant has already placed a Notice of Appeal in the Court of Appeal and that he is keen on settling the matter amicably as he knows no other home save for where he resides.



4. The application was opposed vide the contents of the Replying Affidavit sworn by the Respondent on 19<sup>th</sup> September, 2025. The case of the Respondent is that the application is misplaced, misconstrued, incompetent and lacking in bona fides and the same be dismissed with costs as litigation ought to come to an end. That a dismissal order is not capable of execution and that consequently, there is no order capable of being stayed by the court. That there has been undue delay in bringing the application. That there is no immediate threat of eviction and that even the costs in this matter are yet to be taxed hence there is no threat of execution for costs.

The application was argued orally on 1<sup>st</sup> October, 2025.

5. I have considered the application, the grounds of opposition thereto and the submissions made. The substantive prayer sought is for an order of stay of execution of the eviction ordered by the trial court at Maseno. From the contents of the application, its clear that the application relates to proceedings and orders of the trial court. This kind of application can only be made and entertained before the trial court.
6. The application is not directed at the judgement of this court dated 8<sup>th</sup> May 2025. It is not the execution of the judgement of this court that the application seeks to stay. Even if the application was to seek the stay of execution of the judgement of the court, the same would not be sustainable as the judgement of this court only made an order dismissing the appeal.

The order is not capable of execution save for recovery of costs.

7. There is no evidence placed before this court that execution for recovery of the costs has commenced or is imminent.
8. I find that the application lacks merit. The application is hereby dismissed. Costs to the Respondent.  
Orders accordingly.

**RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE**

In the presence of:

Maureen: Court Assistant.

Lore for the Appellant/Applicant.

Kouko for the Respondent.

