



REPUBLIC OF KENYA



KENYA LAW
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**Oure v Ochanjo & 2 others (Environment and Land Case
E079 of 2025) [2025] KEELC 6898 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E079 OF 2025**

E ASATI, J

OCTOBER 9, 2025

BETWEEN

DEREK OURE APPLICANT

AND

KENNEDY OCHANJO 1ST RESPONDENT

JUDITH OCHANJO 2ND RESPONDENT

TABITHA OCHANJO 3RD RESPONDENT

RULING

1. The Notice of Motion application dated 15th August, 2025 seeks for orders that: -
 1. Pending hearing and determination of the appeal, the honourable court be pleased to grant stay of execution of the judgement of Hon. Amos Kiprop Makoross – SRM delivered on the 4th August, 2025 in TAMU MC ELC NO. E003 of 2023, the decree thereof and any other consequential orders.
 2. Pending hearing and determination of the appeal, the honourable court be pleased to issue an order of temporary injunction restraining the Respondents whether by themselves, their agents, servant or any person acting under their authority from interfering with the Plaintiff's quite and peaceful enjoyment of the parcel of land known as Kisumu/Koru/1018.
 3. That costs of the application be provided.
2. The application was based on the grounds on the Notice of Motion and the contents of the Supporting Affidavit sworn by the Applicant on 15th August, 2025 and the annexures thereto.
3. The application was opposed vide the grounds of opposition contained in the Replying Affidavits sworn by the 1st and 2nd Respondents on 26th September, 2025 and the annexures thereto.



4. The 1st Respondent vide his Replying Affidavit adopted the contents of the Replying Affidavit of the 2nd Respondent as his evidence. The 2nd Respondent deposed that the judgement of the trial court being a negative order has nothing capable of being a legitimate basis for the execution. That the Appellant had been evicted from the suit land before filing of the suit before the trial court through Victoria Blue Services Auctioneers and that the 2nd Respondent has taken possession of the suit land. That the Appellant ceased to be in control or possession of the suit land as far as back as 10th February, 2023 to date hence the application for temporary injunction is overtaken by events.
5. It was submitted on behalf of the Applicant that the Applicant was no longer in occupation of the suit land and that the main concern is stay of execution for recovery of costs awarded in the suit, pending appeal. The prayer for an order of temporary injunction was thus abandoned vide the applicant's submissions. And it was clear from the annexures to the Replying Affidavit by the 2nd Respondent that the applicant had long been evicted from the suit land hence the prayer was overtaken by events.
I have considered the application and the grounds in opposition thereof.
6. The grounds for grant of an order of stay of execution as provided in Order 42 Rule 6(2) of the Civil Procedure Rules are that the Applicant must demonstrate to the satisfaction of the court that substantial loss may result to him/her unless the order of stay of execution is made. Secondly, the application must be brought without unreasonable delay and that thirdly such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given by the applicant.
7. Although the application was brought without unreasonable delay, the other grounds for grant of the orders sought have not been demonstrated.
8. There is no evidence of any imminent execution of a judgement. There is no evidence that the Applicant will suffer substantial loss which is the core consideration in an application of this nature. The order made in the judgement of the trial court was a dismissal of the suit hence a negative order and incapable of execution.
9. The court finds that the grounds for granting an order of stay of execution have not been demonstrated. The application is not merited and is hereby dismissed. Costs to the Respondents.

Orders accordingly.

RULING READ AND SIGNED AT KISUMU AND DELIVERED THIS 9TH OCTOBER, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Muyoka h/b for Biko for the Appellant/Applicant.

Ragot for the Respondents.

