

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**  
**ELCLA NO. E014 OF 2025**

**SILAS MACHEMO SIMOTWA-----**  
**APPELLANT**

**VERSUS**

**CHARLES KIPSIRO KITYO-----**  
**RESPONDENT.**

**RULING**

1. The Appellant/Applicant has moved this Honourable court vide a Notice of Motion application under Sections 1A, 3 and 3A CPR dated 23<sup>rd</sup> April 2025 seeking the following orders;

(1) (SPENT)

(2) THAT the Honourable Court be pleased to stay execution of the warrants of Arrest issued by Hon. J.R Ndururi on 21/03/2025 in Kimilili ELC NO. E022 of 2024 against the Appellant/Applicant pending the hearing and determination of this application.

(3) THAT the Honourable Court be pleased to stay execution of the warrants of Arrest issued by the Honorable J.R Ndururi on 21/03/2025 in Kimilili ELC NO. E022 of 2024 against the Appellant/Applicant pending hearing and determination of this appeal.

(4) THAT the Honourable Court do lift the warrants of arrest issued by the Honourable J.R Ndururi on the 21/03/2025 against the Appellant/Applicant pending hearing and determination of the Appeal.

(5) THAT the Honourable Court be pleased to stay of proceedings in the lower Court pending the hearing and determination of this Appeal.

(6) THAT costs of this Application be provided for.

2. The said application is based on grounds that the Respondent herein filed an application for contempt of court dated 23/10/2024 seeking the committal to jail the Applicant for alleged disobedience of the court order issued sometimes on the 18<sup>th</sup> July 2024 and after the hearing, the trial court delivered its ruling on 21/03/2025 and found the Appellant/Applicant guilty for disobedience of the court orders of 18<sup>th</sup> July, 2024 and issued a warrant of his arrest against him. Being dissatisfied with the said decision, the Appellant/Applicant preferred this appeal and the present application for stay of execution pending the hearing and determination of this appeal.
3. The application is further supported by the affidavit of the Appellant/Applicant sworn on even date in which he reiterated the averments contained in the grounds on the face of the application. In addition, the Applicant deposed that the consequence of the warrants of arrest is that he is at risk of being arrested any time thereby rendering the appeal nugatory.
4. When the said application was placed before me sitting as the duty court, I did not certify the same urgent to be heard on priority basis and directed that the same be disposed of

by affidavit evidence and written submissions. At the lapse of the timelines given and after satisfying itself that proper service had been effected upon the Respondent, this court directed the application to proceed ex-parte.

5. I have considered the application, the supporting affidavit and the annexures thereto as well as the relevant law. The Appellant/Applicant was found guilty by the trial court for disobeying its orders and issued warrants of arrest against him on 21/03/2025. The Appellant/Applicant is contesting the said orders on grounds that the trial court erred in dealing with and entertaining an application that was not duly signed by the applicant. The Appellant/Applicant also submits that the trial magistrate erred in law by admitting photographic evidence without production of a certificate of electronic evidence. Whereas the Respondent did not respond to the application, the Appellant/Applicant does not deny the allegations of disobedience of the orders issued by the trial court on 18<sup>th</sup> July, 2024 but only raises issues of procedural technicalities.
6. In view of the foregoing and considering that the Appellant/Applicant has only invoked the inherent powers of this court under the oxygen principles and not substantive orders under Order 42 Rule 6 CPR, I find the Notice of motion application dated 23<sup>rd</sup> April 2025 devoid of merit and the same is hereby dismissed.
7. I make no order as to costs.

**READ, DELIVERED** and **SIGNED** at Bungoma this 09<sup>th</sup> day of October, 2025

**HON. E.C. CHERONO**

**ELC JUDGE**

In the presence of;

- 1.Appellant/Applicant-present.
2. Respondent/Advocate-absent.
3. Bett C/A.