



REPUBLIC OF KENYA



KENYA LAW
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Omar & 7 others (Members of Vitsangalaweni Community) v Muhsin (Environment and Land Appeal E016 of 2025) [2025] KEELC 5806 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5806 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL E016 OF 2025**

**YM ANGIMA, J
JULY 31, 2025**

BETWEEN

**ABDULRAHMNA OMAR 1ST APPELLANT
MWINYI MFAKI 2ND APPELLANT
SAIDI MADILI 3RD APPELLANT
SHEE ALI FAKI 4TH APPELLANT
SOPHIA SALIM 5TH APPELLANT
SULEIMAN MWAKUCHENGWA 6TH APPELLANT
ALIFAN TANZA 7TH APPELLANT
HAMISI HASSAN NG'ANZI 8TH APPELLANT
MEMBERS OF VITSANGALAWENI COMMUNITY**

AND

ABDULBASIT SALEH MUHSIN RESPONDENT

RULING

1. By a notice of motion dated 27.03.2025 filed under certificate of urgency pursuant to Order 42 rule 6 of the Civil Procedure Rules (the Rules), Sections 1A, 1B, and 3A of the *Civil Procedure Act* (Cap 21) and all other enabling provisions of the law, the appellants sought stay of execution of the decree of the trial court dated 07.03.2025 in MELC No. 1 of 2019 pending the hearing and determination of the intended appeal.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit of Abdulrahman Omar sworn on even date. The appellants contended that the appeal raises very substantial issues and that they stood to suffer substantial loss unless a stay was



granted. They pleaded that they had their homes on the suit property and that their pending appeal shall be rendered nugatory unless the stay sought was granted. As a result, the court was urged to grant a stay of execution of the decree of the trial court.

3. When the application was first listed for inter partes hearing on 15.05.2025 the respondent sought and obtained an extension of 30 days to file and serve a response to the application. However, there was no response on record by the time of preparation of the ruling. None of the parties had also filed submissions by the time of preparation hereof.
4. The court has considered the appellants' application and the material on record. The appellants' allegations that they have residential houses and places of worship on the suit property were not controverted by the respondent. The appellants' allegation that the respondent has never been in possession of the property was not controverted either. There is no doubt that the instant application was filed without undue delay. The record shows that the decree of the trial court was passed on 07.03.2025 whereas the application for stay was filed on 27.03.2025.
5. The provisions of Order 42 Rule 6(2) of the Rules on stay of execution stipulates as follows;

“No order for stay of execution shall be made under sub-rule (1) unless:-

 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
6. The court is satisfied on the basis of the material on record that the appellants have demonstrated the risk of substantial loss in the absence of a stay. The court is satisfied that if the appellants were to be evicted and their houses removed from the suit property during the pendency of the appeal their socio-economic lives shall be seriously disturbed thereby resulting in substantial loss within the meaning of Order 42 rule 6 (2) of the Rules. The court is thus inclined to grant a conditional stay of execution on condition that the appellants shall deposit a sum of Kshs.100,000 in court as security for due performance of the decree should the appeal ultimately fail.
7. The upshot of the foregoing is that the court finds merit in the appellants' said application for stay pending appeal. As a result, the court makes the following disposal orders;
 - a. There shall be a stay of execution of the decree of the trial court dated 07.03.2025 in Mombasa MELC No. 1 of 2019 for a period of 2 years from the date hereof or until the hearing and determination of the appeal, whichever comes first.
 - b. The appellants shall deposit on a sum of Kshs.100,000 in court within 21 days from the date hereof as security for due performance of the decree in default of which the stay shall lapse.
 - c. Costs of the application shall be costs in the appeal.
 - d. The appeal shall be mentioned on 29.10.2025 to confirm filing and service of the record of appeal.

Orders accordingly

It is so ordered.



RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 31ST DAY OF JULY, 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Muyala for the appellants

Ms. Kanyaha for the respondent

