



Okoko v County Government of Kisumu & another (Environment and Land Appeal E065 of 2025) [2025] KEELC 18547 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18547 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E065 OF 2025
SO OKONG'O, J
DECEMBER 17, 2025**

BETWEEN

ANDREW MATOKA OKOKO APPELLANT

AND

COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT

ISAAC ODERO MBECHI 2ND RESPONDENT

RULING

1. The Appellant filed a suit against the Respondents at the Senior Principal Magistrate's Court at Nyando, being SPMC ELC No. 44 of 2018 (hereinafter referred to as "the lower court") seeking, among others, a declaration that the Appellant was the absolute and beneficial owner of the parcel of land known as Plot No. 64 Chemelil Round About Market (hereinafter referred to as "the suit property"), a permanent injunction restraining the Respondents from subdividing or evicting the Appellant and his brothers from the suit property or interfering with their peaceful enjoyment and occupation of the property, and the costs of the suit.
2. The Appellant averred that he was the registered owner of the suit property and that in 2008, the Respondents, using police officers, began harassing the Appellant. The Appellant averred that the 2nd Respondent, in collusion with the 1st Respondent, also decided to fraudulently revert the suit property to the name of the original owner from whom the Appellant purchased the same. The Respondents filed defences in the lower court denying the Appellant's claim. The 2nd Respondent, in addition, filed a counterclaim against the Appellant. The 2nd Respondent averred that the Appellant was occupying the suit property as a tenant and not as the owner of the property. The 2nd Respondent averred that the Appellant had not paid rent from January 2008. The 2nd Respondent prayed for judgment against the Appellant for an order that the Appellant pay the outstanding rent from January 2008 until the final determination of the suit, general damages, and costs.



3. The lower court heard the parties and delivered a judgment in favour of the Respondents on 19th June 2025. The lower court ordered the Appellant to pay the monthly rent due to the 2nd Respondent from January 2008, and the costs of the suit.
4. The Appellant was aggrieved by the said judgment and filed the present appeal on 16th July 2025. The Appellant challenged the decision of the lower court on several grounds. The Appellant thereafter filed the present application on 29th July 2025, seeking a stay of execution of the lower court judgment pending the hearing of the appeal.
5. The Appellant's application has been brought on the ground that the Appellant would suffer substantial loss if the stay sought is not granted. The Appellant has averred that his appeal has good chances of success and that the application for stay has been brought without unreasonable delay. The Appellant has averred that he is willing to furnish such security as the court may order as a condition for granting the stay sought.
6. The Application is opposed by the 2nd Respondent through a replying affidavit sworn on 28th August 2025. The 2nd Respondent has averred that the Appellant admitted at the lower court that he was paying a monthly rent of Kshs. 15,000/-. The 2nd Respondent has averred that as at August 2025, the rent due and payable by the Appellant was Kshs. 2,985,000/-. The 2nd Respondent has averred that the Appellant had deprived the estate of his father, Paul Isaac Odero income for over 16 years. The 2nd Respondent has averred that the Appellant's application has not met the threshold for granting an order of stay of execution. The 2nd Respondent has averred that if the court is inclined to grant the application, the Appellant should be ordered to deposit in an interest-earning joint account in the names of the advocates for the parties a sum of Kshs. 2,985,000/- as security.
7. The application was heard by way of written submissions. The Appellant filed submissions dated 21st October 2025, while the 2nd Respondent filed submissions dated 22nd October 2025. I have considered the Appellant's application together with the affidavit filed in support thereof. The application was brought under Order 42 Rule 6 of the Civil Procedure Rules. Order 42 Rule 6(2) of the Civil Procedure Rules provides that:

- “(2) 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 ultimately be binding on him has been given by the applicant.”

8. In *Kenya Shell Limited v. Karuga* (1982 – 1988) I KAR 1018 the court stated that:

“It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money.”



9. I am not persuaded that the Appellant's application has met the threshold for granting an order for a stay of execution. In the judgment of the lower court, the court dismissed the Appellant's suit. The court entered judgment for the 2nd Respondent in his counterclaim for rent arrears. The court also awarded the 2nd Respondent the costs of the suit. In his affidavit in support of the application, the Appellant did not state in what manner he would suffer substantial loss if he pays the rent arrears and the costs of the suit. The Appellant has not indicated that he will be unable to recover the decretal sum from the 2nd Respondent if paid. The claim by the Appellant in his submissions that he stands the risk of being evicted from the suit property is not deponed in the affidavit in support of the application. In any event, the lower court did not give an order for the eviction of the Appellant from the suit property. The Appellant was only ordered to pay the outstanding rent. I am not persuaded that the Appellant is likely to suffer substantial loss if the stay is not granted. I am of the view that a case has not been made for the grant of the order sought by the Appellant.
10. The upshot of the foregoing is that the Appellant's application dated 29th July 2025 has no merit. The application is dismissed with costs to the 2nd Respondent.

DELIVERED AND SIGNED AT KISUMU ON THIS 17TH DAY OF DECEMBER 2025

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Odeny for the Appellant

Ms. Okaka h/b for Mr. Yogo for the 2nd Respondent

Ms. J. Omondi-Court Assistant

