

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT HOMABAY**  
**ENVIRONMENT AND LAND COURT LAND APPEAL NO.**  
**E020 OF 2025 as consolidated with ENVIRONMENT AND**  
**LAND COURT LAND APPEAL NO. E022 OF 2025**  
**ESTHER AKUMU ONGOWO.....**

**APPELLANT**

**VERSUS**

**EMILY OMBOTO.....**

**.....RESPONDENT**

*(Being an appeal against the judgment of Hon. S. Ongeru  
delivered on 22<sup>nd</sup> April 2025 in Oyugis MELC No. E072 of  
2021)*

**JUDGEMENT**

1. By way of a Plaint dated 3<sup>rd</sup> December 2021, the Appellant sought the following orders in the trial court;

**1) A permanent injunction restraining the defendant and/or her agents, servants and/or employees howsoever from trespassing upon or utilizing or alienating the suit property and further from interfering with the plaintiff's possession and quiet enjoyment of the suit property.**

**2) Compensation for the trees harvested by the defendant.**

**3) General damages for trespass and loss of value.**

**4) Costs of the suit.**

2. The appellant pleaded that she was the administrator of the estate of Sylvester Okuto, the registered proprietor of EAST KASIPUL/KOJWACH KAMIORO/541 measuring approximately 2.0 Hectares. Further, that the property belongs to the estate of the deceased and is being administered by the Plaintiffs.
3. The Appellant, then the plaintiff, he pleaded that sometime in 2011 unknown persons invaded the suit land and began fencing and planting trees. The appellant approached the defendant who indicated that she had a purchaser's interest in the suit property but has never been able to claim and produce documents justifying the same. She urged that the respondent has refused to stop her acts of aggression despite several demands and requests to cease the said actions
4. The defendant filed a Statement of Defence and Counterclaim dated 14<sup>th</sup> October 2024.
5. She urged that she is the registered proprietor of EAST KASIPUL/KOJWACH KAMIORO/1417 which she acquired in the year 2019 and that by mutual mistake, she settled on EAST KASIPUL/KOJWACH KAMIORO/541 whereas the appellant's

grandson settled on EAST KASIPUL/KOJWACH KAMIORO/1417.

The defendant denied trespassing on the suit land.

6. In her Counterclaim, the defendant sought judgement for the following orders;

**a) A declaration that each party is mistakenly occupying the other's parcel of land.**

**b) An order that each party vacate, remove her property and hand over vacant possession to the other.**

**c) Costs.**

**d) Interest.**

7. The plaintiff filed a reply to the amended defence and a defence to the counterclaim where she denied that the defendant was the registered proprietor of 1417 and further, that she never bought the said parcel.

8. In defence to the counterclaim, the appellant denied that the dispute arose out of a mutual mistake and prayed that the counterclaim be dismissed.

9. The matter then proceeded for hearing.

10. **PW1** was **Esther Akumu** who testified that she was the wife to Sylvester Okuto who had two pieces of land being

parcel EAST KASIPUL/KOJWACH KAMIORO/1541 and 1416. She stated that parcel 541 was not sold and that in 2011 some people trespassed on her land with a tractor, ploughed the maize she had planted and planted trees which are there to date. She stated that the people were sent by Omboto and she was not aware of how the sub division was done in 1416. She additionally stated that the title deed that was exhibited is not the land where the trees were planted.

**11.** During cross examination, she stated that she was the wife of Sylvester Okuto who died in 1991. That he was the proprietor of EAST KASIPUL/KOJWACH KAMIORO/541 and 1416. That EAST KASIPUL/KOJWACH KAMIORO/1416 was as a result of sub division of 547. She stated that she did not know the origin of EAST KASIPUL/KOJWACH KAMIORO/1416 and that she lives in it.

**12.** The parties agreed to have the surveyor visit the suit parcel which the court allowed them to do and they were also at liberty to engage private surveyors.

**13.** PW1 was recalled and she testified that the parcel number was known to her and she did not remember the defendants' land. That her son, John Odawo, occupies the land and he

has done so for 10 years which is the land that the surveyor said belongs to the defendant.

**14. PW2** was **John Odawo** who testified that he put up a home in the land in 1982 and that his father pointed out the land to him.

**15.** During cross examination he stated that he read the report but did not understand some parts. Further, that it is true that 541 belonged to his mother. He agreed that 1417 belonged to Emily and he occupied it.

**16.** The defendant was then put on her defence on the close of the plaintiff's case.

**17. DW1** was **Emily Omboto** who stated that she purchased the land from Sophia Olang in 2009 in East Kasipul/Kojwach-Kamioro/541. She did not know that Sophia put her in 541 instead of 1417 and that the survey showed 541 instead of 1417. She stated that she occupied 541 but Esther Okumu's grandchildren occupy 1417. She stated that her occupation of 541 was by mistake and proposed that she be allowed to remove the trees planted.

**18.** During cross examination, she stated that she did not go to the land control board and that she visited no. 541 when

the surveyor came. She stated that she did not acquire 1417 and came to know the occupier of 1417 was the grandson of the plaintiff. She maintained that she was shown 541 by the vendor.

**19.** The defence closed his case and the parties filed submissions.

**20.** Upon considering the pleadings, testimonies and submissions, vide its judgement delivered on 22<sup>nd</sup> April 2023, the trial court issued a permanent injunction against the defendant, and ordered her to vacate the property within 60 days, essentially entering judgment in favour of the Plaintiff therein, Esther Akumu.

**21.** Being aggrieved with the decision of the trial court, the Appellant in E020 of 2025, Esther Akumu, instituted the present appeal vide a Memorandum of Appeal dated 21<sup>st</sup> May 2025 premised on the following grounds;

**1)The Learned Trial Magistrate erred in law and in fact in holding that there was confusion in pointing out to the parties the correct piece of land when the evidence on record shows clearly that there was no such confusion.**

**2)The Learned Trial Magistrate erred in law and in fact in allowing the Appellant/Respondent 60 days to continue trespassing and harvesting trees on the suit property after holding that she (Respondent) is a trespasser. The court was thereby abating the Respondent acts of trespass.**

**3)The Learned Trial Magistrate erred in law and in fact in allowing the Appellant/Respondent, after finding her to be a trespasser, to benefit from her acts of trespass to unjustly enrich herself by harvesting trees from the suit property.**

**4)The Learned Trial Magistrate erred in law and in fact in giving judgement which goes against basic natural justice by rewarding the Appellant/Respondent from her acts of trespass instead of condemning and penalizing her and thereby unjustly enriching herself from her illegal activities.**

**5)The Learned Trial Magistrate erred in law and in fact in failing and/or refusing to award general damages to the Cross Appellant.**

**6)The Learned Trial Magistrate erred in law and in fact by delivering judgement that goes against the weight of the evidence on record.**

**7)The Learned Trial Magistrate erred in law and in fact in failing to appreciate the Cross-Appellant's pleading and evidence tendered in support thereof.**

**22.** The Defendant filed an Appeal as well, vide the Memorandum of Appeal dated 22<sup>nd</sup> May 2025, in Homa Bay ELCLA E022 of 2025, which was premised on the following grounds;

**1)The Learned Trial Magistrate erred misdirected himself on several matters of law and fact.**

**2)The learned trial magistrate erred in law in failing to note that the contracts relating to the occupation of Land Parcels Nos. East Kasipul/Kojwach-Kamioro/541 and East Kasipul/Kojwach-Kamioro/1417 were vitiated by the mutual mistake of both parties to the contract and**

**therefore no party should have been penalized to pay costs.**

**3)The learned trial magistrate erred in land law in failing to take into consideration the doctrine of overriding interest considering that the transaction took place in the year 2009 or thereabout the appellant had occupied the land for over 12 years before the plaintiff respondent who was as well occupying the wrong land raised the issue of wrongful occupation.**

**4)The learned trial magistrate erred in law of evidence in failing to appreciate that the appellant having purchased the land from Sophia Olang Ochieng who was the owner after a third transfer, the appellant was a bona fide purchaser for value without notice of the error done by the surveyor in plotting and therefore the appellants rights and title are protected by the provisions of Section 26(1) and 80(2) of The Land Registration Act and are indefeasible in law.**

**5)The learned trial magistrate erred in law of procedure practice and evidence in failing to note that the error occurred after 4<sup>th</sup> September 2006 and therefore on the 91 December 2021 when MC ELC Land Case No. 72 of 2021 was filed the suit was time barred by Section 7 of The Limitation of Actions Act since 15 years had elapsed and therefore leave to file suit out of time should have been obtained.**

**6)The learned trial magistrate erred in law in deciding the case against the weight of evidence.**

**23.** She additionally filed a Supplementary Record of Appeal dated 30<sup>th</sup> May 2025 premised on the following grounds;

**1)The learned trial magistrate misdirected himself on several matters of law and fact in that: -**

**a)having realized that the identification of the boundaries between Land Parcels Nos. East Kasipul/Kojwach-Kamioro/541, 1416 and 1417 was necessary he should have acknowledged that he had no further jurisdiction to entertain the suit until the Land Registrar and the Surveyor**

**had determined the proper boundaries in accordance with Sections 18(2) of The Land Registration Act 2012.**

**b) the respondent being the widow of the registered proprietor of Land Parcel No. East Kasipul/Kojwach-Kamioro/541 is estopped from alleging knowledge of the sale of the land by her husband, Silvester Okuto to Noah Abishai and Sophia Olang for such a long time from 1989 to 2021.**

**2) The learned trial magistrate erred in law in failing to note that the contracts relating to the occupation of Land Parcels Nos. East Kasipul/Kojwach-Kamioro/541 and East Kasipul/Kojwach-Kamioro/1417 were vitiated by the mutual mistake of both parties to the contract and therefore no party should have been penalized to pay costs.**

**3) The learned trial magistrate erred in land law in failing to take into consideration the doctrine of overriding interest considering that the transaction**

**took place in the year 2009 or thereabout and the appellant had occupied the land for over 12 years before the plaintiff/ respondent who was as well occupying the wrong land raised the issue of wrongful occupation.**

**4)The learned trial magistrate erred in law of evidence in failing to appreciate that the appellant having purchased the land from Sophia Olang Ochieng who was the owner after a third transfer, the appellant was a bona fide purchaser for value without notice of the error done by the surveyor in plotting and therefore the appellants rights and title are protected by the provisions of Section 26 (1) and 80(2) of The Land Registration Act and are indefeasible in law.**

**5)The learned trial magistrate erred in law of procedure practice and evidence in failing to note that the error occurred after 4<sup>th</sup> September 2006 and therefore by the 9<sup>th</sup> December 2021 when MC ELC Land Case No. 72 of 2021 was filed the suit was time barred by Section 7 of The Limitation of**

**Actions Act since 15 years had elapsed and therefore leave to file suit out of time should have been obtained.**

**6) The learned trial magistrate erred in law in deciding the case against the weight of evidence.**

**24.** The Appeals were consolidated with Homa Bay ELCLA E020 of 2025 as the lead file. The parties prosecuted the appeal vide written submissions.

**Appellants' submissions**

**25.** Counsel submitted that the learned trial magistrate erred in law and in fact in failing to award the Plaintiff general damages for trespass. He highlighted the finding of the trial court and urged that the holding of the court was clearly erroneous. He denied that the alleged Sophia Olang pointed out any parcel of land to the Appellant and further, stated that the Appellant and her son have been in occupation of the original 574 and were not buyers. She was not aware of the purported sub-division of 547 and her son, who is separate and distinct from her, is occupying the portion now denominated as 1417, which occupation began in 1982. That

the place was pointed out and bequeathed to him by his father and not by the alleged Sophia Olang.

**26.** Counsel urged there was equally no mistake on the part of the Respondent and her acts of trespass were unlawful, well calculated, deliberate and malicious. She entered the land, destroyed crops and thereafter planted her trees and has been in occupation of the same from 2011 to the date hereof.

**27.** He urged that the Appellant has been denied access and use of her land since 2011 which was made worse by the fact that she has been given 60 days to vacate the land. Counsel submitted that it would be a travesty of justice for a proven trespasser to be allowed by a court of law to benefit from the acts of her trespass. That she will have to remove each and every trunk to be able to restore the land to a state which can be ploughed and utilized. He stated that such a scenario is distasteful to justice and fairness and maintained that the trial Magistrate erred fundamentally in failing to assess damages even if the claim for general damages was dismissed.

**28.** Counsel restated the role of the appellate court and urged the court to find that the Appellant is entitled to general damages for trespass. Counsel proposed a sum of Kshs. 8,000,000/= as just and fair compensation for the Appellant by way of general damages for the brazen acts of trespass by the Respondent.

**29.** Counsel stated that Ground 1 of the Amended Memorandum of Appeal is misconceived. That the substratum of the suit in the subordinate court was the Appellant/Defendant's acts of trespass in respect to EAST KASIPUL/KOJWACH KAMIORO/541 (suit property) which suit property does not share a common boundary with EAST KASIPUL/KOJWACH KAMIORO/1416 and 1417. He urged that there is no evidence of sale of the suit property to the Appellant as the title thereto is in the name of the Respondent and any allegations in respect to any other property other than the suit property have no relevance to the subject matter herein.

**30.** Counsel urged that Ground 2 of the Amended Memorandum of Appeal has no relevance and is immaterial to the subject matter herein. Firstly, there was no mutual

mistake in respect to the suit property. Secondly, there was never any sale contract in respect to the suit property. Thirdly, the proceedings appealed against do not relate to EAST KASIPUL/KOJWACH KAMIORO/541.

**31.** Counsel submitted that Ground 3 of the Amended Memorandum of Appeal is based on a misapprehension of the facts and the law. The Appellant trespassed on the suit property in the year 2011. ELC NO; E072 OF 2021 was filed 10 years from the date of the commencement of the acts of trespass complained of. There was certainly no transaction involving the suit land in 2009.

**32.** On Ground 4, Counsel submitted that it is totally misconceived and has no relevance to the subject matter herein. Further, that Ground 5 of the Amended memorandum of Appeal is inapplicable to the facts and circumstances of this case. He stated that firstly the issues were not pleaded at the trial stage and cannot therefore be taken up at this stage. Secondly, the acts complained of in respect to the suit property occurred in the year 2011. Thus, the suit was filed within the limitation period. He prayed the appeal be dismissed and the cross appeal be allowed.

### **Respondents' submissions**

**33.** In respect to appeal E020 of 2025, Counsel, referring to grounds 1, 2 and 6, Counsel cited Section 2 of The Land Registration Act and Land Act on the definition of land and Article 260 of the Constitution on the definition of “natural resources”. He urged that in the evidence of Esther Akumu she stated that the trees growing on the suit land from 2009 to-date were planted by Emily Awuor Omboto. Further, that PW2, John Odawo stated that he agreed that 1417 belongs to Emily and he occupied it.

**34.** Counsel urged that the definition in Article 260 does not include trees planted by a person as a component of the definition of land. The trees clearly therefore belong to the respondent in the lead appeal and she is entitled to harvest them if she has to vacate the land she occupies. Further, that from the evidence adduced in the trial court it comes out clearly that there was an error in survey whereby a wrong site was pointed out to the purchaser and the vendor ended up occupying the portion where the purchaser bought and vice-versa. There is thus no doubt that a proper survey and realignment of boundaries between Land Parcels Nos.

East Kasipul/Kojwach-Kamioro/541, 1416 and 1417 was necessary and in fact, before the hearing of this case an order was made to have the surveyor visit the disputed parcels of land and identify them to the parties.

**35.** Counsel submitted that Section 18(2) of The Land Registration Act, 2012 applies in such cases. Counsel reproduced the evidence of PW and urged that the court and the Advocates for both parties concur that the contracts of sale were vitiated by mutual mistake of both parties to the suit and, that the obvious reason that the suit was barred by limitation. Counsel posited that there is no reason why the defendant (now respondent) should be condemned to pay the costs of the suit.

**36.** On grounds 3 and 5, Counsel submitted that the evidence adduced by both parties in the suit shows that the cause of action arose in 2009 or 2011 which translate to 12 or 10 years by the time this suit was filed. Counsel urged that Section 7 of The Limitation of Actions Act (cap 22) states that an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some

person through whom he claims to that person. He pointed out that in the plaint the plaintiff stated that the defendant fenced and planted trees and crops on the suit land.

**37.** He pointed out that the plaintiff accused the defendant if trespassing and cutting the trees she planted thereon in 2011 but did not state the date the alleged trespass took place. Counsel cited Section 4(2) of The Limitation of Actions Act and submitted that trespass to land is a tort and it is committed against a person in possession of the land and not necessarily the registered owner of the land. That the basic elements of trespass to land are: a) There must be direct and intentional entry; b) The entry must be without the land owner's permission or consent; c) And the entry must involve a direct physical intrusion onto the land. Further, that the defendant purchased the land as the third owner after the land had been sold to Noah Abishai Okumu in 1989 who sold to Sophia Olang Ochieng in 2006. She acquired the same in 2009 from Sophia Olang Ochieng. Her possession therefore cannot amount to trespass.

**38.** Counsel cited the provisions Section 28(h) of The Land Registration Act and urged that at no stage in the

proceedings did the plaintiff ever seek leave of the court to file suit for trespass to land or for land claim out of time. That this is a dispute that need not have been filed in court and a report to the land registrar was adequate to correct the error that both parties admitted.

**39.** On ground 5, Counsel urged that a bona fide purchaser is a person who acquired property for valuable consideration, in good faith, without notice of any conflicting claims or defects in the seller's title. Provided that the purchaser exercised due diligence. He cited *Dina Management Limited vs. County Government of Mombasa & 5 others* (2023) eKLR. In this regard.

**40.** Counsel submitted that the error was made in either 1989 or 2006 when the land was sold to Noah Abishai Okumu or in the year 2006 when the same was transferred to and registered in the name of Sophia Olang Ochieng. That by the year 2009 when Emily Omboto bought the land, Sophia Olang Ochieng was the registered proprietor of the suit land and not Silvester Okuto. The fact that Silvester Okuto settled his son John Odawo in the land now registered in the name of

Emily Omboto clearly shows that no mens rea was involved on any side.

**41.** Counsel urged that Section 79 of The Land Registration Act gives the Land Registrar power to rectify the register of land in the various circumstances stated therein and where the parties agree as in the instant case Section 79(1) (b) gives that power. Further, that Section 80 of The Land Registration Act gives similar powers to court to duly rectify the register. He cited Subsection (2) and urged that if as stated in the case both parties are ready to swap their positions, the defendant should be allowed to harvest the trees she planted on the land and remove the fence, if any and similarly PW2, John Odawo, should also remove his property from Parcel No. 1417 and move to No.541. Each party should bear his/her costs in the lower court and this court should only award the costs of this appeal to the respondent.

### **Analysis and Determination**

**42.** This being an appeal, I must state the duty of the appellate court. In **Williamson Diamonds Ltd and another v Brown [1970] EA 1**, the court held that:

**“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”**

**43.** Further, in **PIL Kenya Limited v Oppong [2009] KLR 442**, it was held that:

**“It is the duty...of a first appellate court to analyse and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in mind that the trial court had the advantage of hearing and seeing the witnesses and their demeanour and giving allowance for that”.**

**44.** Having considered the memoranda of appeal from both parties and the attendant records of appeal, the following issues emerge for determination;

**i) Whether the trial court erred in issuing a permanent injunction and orders for eviction of the Defendant therein**

**ii) Whether the trial court erred in failing to take into consideration the doctrine of overriding interest**

**i) Whether the trial court erred in issuing a permanent injunction and orders for eviction of the Defendant therein**

**45.** From the evidence tendered in court in form of testimonies, it was evident that the Defendant/Respondent had purchased the suit land from one Sophia Olang in the year 2009. She was shown the portion of earth she did occupy and she did. She believed she had purchased East Kasipul/Kojwach Kamioro/541 but it later emerged that she had been shown the wrong parcel of land to occupy. From the title deed and official search produced, it was evident that the defendant, Emily Omboto was the registered owner of parcel no. 1417.

**46.** The surveyor visited the land and filed a report dated 31<sup>st</sup> July 2024. He stated in it that upon conducting the survey, he found that the Plaintiff's son was in occupation of the Defendants' parcel being no.1417 and he had erected a structure on it. Further, that on parcel no. 541, the proprietor

of 1417 had planted trees covering 0.86 Ha. Further that parcel No. 541 was intact and parcels Nos. 1416 and 1417 arose from sub division of 547. I have carefully considered the findings of the surveyor in relation to the parties' testimonies on actual occupation of the ground. It is trite that an owner of a property in form of land is entitled to occupy that which belongs to him or her, and if they are on a wrong parcel, by mistake that ought to be corrected by way of physical relocation, unless the respective parties agree to exchange the said properties on some agreed consideration of sorts, including but not limited to compensation of one or other depending on the factual situation on the values of the to-be exchanged parcels.

**47.** It follows, in the instant case, that from the report, it is clear that the occupation of the respective portions by the parties was a mistake and needed correction. Therefore, the court was correct in issuing the said vacation or eviction orders.

**48.** The upshot of the foregoing is that analysis of the grounds of appeal in Appeal No. E020 of 2025 are now to be considered as having been dealt with as they were premised on the

finding on the correct ownership of the land vis-à-vis the occupation on the ground.

**ii) Whether the trial court erred in failing to take into consideration the doctrine of overriding interest**

**49.** It is evident that the appellant in E022 of 2025 - Emily Omboto, mistakenly occupied parcel 1417 believing it was 541, to the extent that she even went ahead and planted trees on the land. She was put in possession of the land in the year 2009 and the suit was filed in the year 2021, in December. From the testimonies and the survey, it is evident that the respondent had been in occupation of the land from the year 2009. Therefore, the issue of overriding interest arose.

**50.** Section 7 of the Limitation of Actions Act provides as follows;

**An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.**

**51. Section 13** of the Limitation of Actions Act provides:

**1. A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of Limitation can run (which possession is this Act referred to as adverse possession), where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.**

**2. Where a right of action to recover land has accrued and thereafter, before the right is barred, the land cease to be in adverse possession, the right of action is no longer taken to have accrued and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.**

**3. For the purpose of this section, receipt of rent under a lease by a person wrongfully claiming in accordance with section 12 (3) of this Act, the land**

**in reversion is taken to be adverse possession of the land.**

**52.** In the case of **Edward Moonge Lengusuranga vs James Lanaiyara & Another (2019) eKLR**, it was held as follows;

**“Section 7 of the Limitation of Actions Act, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that the first Defendant having bought the suit land in the year 1999 (as per Paragraph 6 of the Complaint) and taken possession of the same, the Plaintiff herein could only seek to recover it from the 1<sup>st</sup> Defendants, but only if he did so within twelve years after the Sale Agreement.”**

**53.** Therefore, given that the period from the occupation of the land to the time the suit was filed was 12 years, Esther Akumu’s claim to any proprietary interest in the suit land was time barred. The court having found that the defendant had been in occupation of the suit land, should have made a finding on the overriding interest of the defendant which was adverse to any interest by the plaintiff therein.

**54.** It is therefore my considered view that the appeal in Homa Bay ELCLA E020 of 2025 lacks merit and is dismissed. However, the appeal in Homa Bay ELCLA E022 of 2025 succeeds and is allowed in the following terms;

- i) The decision of the trial court is set aside and the suit in the trial court dismissed in its entirety as the respondents' title to the suit was extinguished by effluxion of time and any claim to the same was time barred.**
- ii) Each party shall bear its own costs in the appeal and the suit in the trial court.**

**55.** Orders accordingly.

Judgment **dated, signed, and delivered virtually** via the **Teams Platform this 29<sup>th</sup> day of January 2026.**

**HON. DR. IUR NYAGAKA**

**JUDGE**

**In the presence of,**

Ochieng Omollo for Appellant in ELCLA No. E020 of 2025.

Ms. Oyala for the Respondent

Ms. Oyala for Appellant in the consolidated file ELCLA No. E022 of 2025 and Omollo for Respondent in it.

**Homa Bay ELCLA E020 of 2025 (Consolidated with E022 of 2025)  
D.O.D 29.1.2026.**

**Omollo, for appellant in No 20**

**Leave to appeal**

**Seek 60 days stay and copy of the judgment and appeal**

**Ms. Oyala: Not opposed**

**Ct.** Leave to appeal granted

Stay of execution granted for 60 days stay and the appellants to be provided with a copy of the judgment and proceedings of the appeal upon payment.