



**Adala v Omayya & 4 others (Enviromental and Land Originating Summons E004 of 2021) [2026] KEELC 586 (KLR) (9 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 586 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2021  
AE DENA, J  
FEBRUARY 9, 2026**

**BETWEEN**

**JOHN ODHIAMBO ADALA ..... PLAINTIFF**

**AND**

**MICHAEL OMA YA ..... 1<sup>ST</sup> DEFENDANT**

**WILLIAM ONYANGO ..... 2<sup>ND</sup> DEFENDANT**

**JACKSON OKETCH OGWAYO ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR-SIAYA ..... 4<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The subject of this ruling is the Notice of Motion application dated 4<sup>th</sup> July 2024. The application seeks orders of stay of execution of judgement and decree dated 31<sup>st</sup> March 2024 and 17/04/2024 pending the hearing and determination of the Appeal in Kisumu Court of Appeal Civil Appeal No.120 of 2024 Michael Omayya Vs John Odhiambo Adala.
2. The application is premised on the grounds on its face and the supporting affidavit of Michael Omayya. It is deponed that plaintiff decree holder was in the process of executing the same which will result into the applicant loosing land that has been registered under his name and which he has been using for a long time. That the decree holder has pursuant thereto applied for consent of the Land Control Board for the transfer of the land into his name. That he stands to suffer irreparable loss. It is averred that the Plaintiff has been in occupation of just a portion and if execution proceeds he will take the entire parcel dispossessing the applicant.



3. The Appeal in Kisumu was pursuant to the judgement of this court delivered and the Memorandum of appeal is attached. It stated that the appeal has a high chance of success. The applicant is willing to abide to any orders as to security.
4. The Respondent filed a replying affidavit to the application sworn on 24/06/2025. It is deponed that his advocate on record received the Memorandum of Appeal herein and he instructed him to file a counter appeal in respect of LR Siaya/Umala/139. That he also instructed his advocate to prepare a consent with the respondents advocate for maintenance of status quo of LR Siaya/Umala/139 and 138. However, the firm on record for the applicant declined to sign the same. That it is in the interest of justice that the court adopts the consent.
5. In further response by Further affidavit sworn on 17/07/2025 the applicant states that the request for status quo to be maintained is insincere and undeserved. That the court in Kisumu on 15th July 2024 issued temporary orders of stay of execution of the judgment delivered on the 21st March 2024 and scheduled the present application for hearing of on the 26th September 2024 which were duly served. The order is attached.
6. Further that being aware of the order and in breach thereof executed part of the judgment and transferred the title in the name of the 1<sup>st</sup> Defendant to his name and was issued with a title deed for S. Ugenya/Umala/138 on the 4th September 2024. The title is attached.
7. It is deponed that the actions of the Plaintiff if not restrained further, will evict the members of the family of the 1<sup>st</sup> Defendant who are utilizing the parcel of land save the portion of land in possession by the Plaintiff measuring /4 acre. That it is necessary for this court to order the Plaintiff to surrender the title in his possession to the Land Registrar Ukwala till the completion of the Appeal filed in the court of Appeal at Kisumu vide Civil Appeal NO E120 of 2024.
8. The deponent is apprehensive in view of the above actions. That Should the court consider the Plaintiff's request for status quo, then status quo should be maintained as at 15th July 2024 when temporary orders of stay of execution of the decree issued on 21st March 2024 were given. Further that the Plaintiff surrenders the title in his possession in reference to S.UGENYA/UMALA/138.

### **Submissions**

9. The application was canvassed by way of written submission. The applicants submissions are dated 17/7/2025. The Respondents submissions were neither in the court nor Case filing system.

### **Analysis And Determination**

10. I have read the affidavits sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions on record. The main issue for determination is whether the application meets the threshold for grant of orders of stay of execution.
11. Order 42 Rule 6 of the Civil Procedure Rules, provides as follows; -

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem



just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (2) No order for stay of execution shall be made under subrule (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.

12. Arising from the above, substantial loss is the main parameter to be demonstrated by an applicant desiring orders of stay of execution of the decree of the court. The apprehension is that if the orders are not stayed the applicant will lose his land yet he is the registered owner. That the decree holder will also move in to occupy the entire land thus displacing him when he the decree holder has just been occupying a portion of the same. That the applicant has utilised his land for a long period of time.
13. But I think what is most important is to appreciate the purpose and mischief meant to be cured by the powers donated to stay execution of judgement or any order.
14. The court has been referred to the case of *RWW v EKW* [2019] eKLR, which considered the purpose of a stay of execution order pending appeal, in the following words:
- “The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs, indeed to grant or refuse an application for stay of execution pending appeal is discretionary, The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”
15. I have noted from the decree of 21/3/2024 a declaration issued that the title in the name of Michael Omayya parcel No. 138 herein has been extinguished by adverse possession and the land registrar Siaya is directed to register the Plaintiff accordingly in respect of the entire land.
16. The above orders are therefore self-explanatory and I need not belabour the point. Indeed, from the proceedings it is clear that the applicant was the registered owner of the parcel No. 138. But the applicants contention is that the judgement vested the entire property to the respondent and not the portion occupied by the respondent leading to his displacement.
17. As it is there is evidence led before the court that the judgement has been executed albeit against the orders of the court which had granted a temporary stay of execution pending the hearing of the present application. I have seen the order of my brother Justice S. Okon’go and I have also seen the evidence of service of the same upon the decree holder. While I must be careful not to turn this application into one of contempt, I think this is information that cannot be ignored by this court. I think the applicant’s apprehension is justified.



18. As it is the court is faced with a judgement that has already been executed and there may be nothing to stay. However, this notwithstanding and guided by the case law herein, the purpose of the stay is to preserve the suit property so as to ensure the appeal is not rendered nugatory should the same succeed. Further to also balance the rights of both the decree holder and the appellant exercising his right of appeal. The decree holder already holds title in his name albeit by ignoring court orders and therefore the prejudice is mitigated.
19. I have noted that the respondents invitation to have the status quo maintained on the parcel 138 and 139. While this is termed insincere for reasons already noted, I think the court is inclined to consider the same owing to the circumstances of the case.
20. Since the objective of Order 40 is to preserve the suit property then the balance of convenience should be in favor of maintaining the status quo. The court finds guidance in the persuasive dictum in the case of Thugi River Estate Limited & another Vs National Bank of Kenya Limited & 3 others [2015] e K.L.R where Justice Onguto (may his soul rest in peace) explained the circumstances under which orders for status quo may be issue thus -

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs.’
21. As I have already noted I see no prejudice the decree holder will suffer as he already holds title in execution of the decree. What must be preserved in my view is the register of the parcel 138 to ensure it remains the same and no further transactions are registered against the title that would render the appeal nugatory and also exposing the applicant to dispossession. I will be inclined therefore to order status quo to be maintained.
22. The court has seen no delay in the filing of the present application the decree having been issued in March 2024 and the application filed in July 2024 a period of less than 4 months considering the decree issued towards the end of the month of March and the application filed in early July.
23. On security I will not order any security from the applicants for the reason that the decree has been executed. However, I would agree that the title in respect of LR Siaya/U mala/138 be surrendered to the court for safe keeping pending the determination of the appeal.
24. The upshot of the foregoing is that I find the application dated 4/07/2024 merited and it is allowed in the following terms; -
  1. The Status quo on the parcel register LR Siaya/U mala/138 and 139 pursuant to the decree of the court dated 21 /03/2024 shall be maintained pending the hearing and determination of the appeal filed at the Court of Appeal Kisumu.
  2. The original title LR Siaya/U mala/138 be surrendered to custody of the DR ELC Siaya pending the hearing and determination of the appeal filed at the Court of Appeal Kisumu.
  3. Costs of the application shall abide the outcome of the appeal.



Orders Accordingly

**DATED AT SIAYA THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2026**

**HON. JUSTICE A. E. DENA**

**JUDGE**

**9/02/2026**

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

Mr. Agina for the Respondent

No appearance for the Applicant

Court assistant: Ishmael Orwa

