



**Oor v Ochieng (Suing on His Own Behalf and on Behalf of the Estate of the Late Paul Ochieng Owuor alias Paulo Ochieng Owuor-Deceased) (Environmental and Land Originating Summons E008 of 2023) [2026] KEELC 625 (KLR) (10 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 625 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2023  
AE DENA, J  
FEBRUARY 10, 2026**

**BETWEEN**

**PETER ODERO OOR ..... PLAINTIFF**

**AND**

**MICHAEL OWUOR OCHIENG ..... DEFENDANT**

**SUING ON HIS OWN BEHALF AND ON BEHALF OF THE ESTATE OF  
THE LATE PAUL OCHIENG OWUOR ALIAS PAULO OCHIENG OWUOR-  
DECEASED**

**RULING**

1. The subject of this ruling is the application dated 29/10/2025 seeking the following orders;-
  - a. That this application be certified as urgent and service be dispensed with in the first instance.
  - b. That pending the hearing and determination of this application inter parties, there be stay of proceeding in Ukwala ELC NO. E034 OF 2023 Michael Owuor Ochieng (suing on his own behalf and on behalf of the Estate of the late Paul Ochieng Owuor) - versus- Peter Odero Oor and Antonina Sarabai, be stayed until this application is heard and concluded.
  - c. That pending the hearing and determination of the substantive Originating summon inter parties, there be stay of proceeding in Ukwala ELC NO. E034 OF 2023 Michael Owuor Ochieng (suing on his own behalf and on behalf of the Estate of the late Paul Ochieng Owuor) -versus- Peter Odero Oor and Antonina Sarabai, until this matter is heard and concluded.
  - d. That the Cost of this application be provided for.
2. The application is premised on the grounds on its face and the supporting affidavit of Peter Odero Oor sworn on 29/10/2025. The applicant depones that he is the owner and occupant of land parcel



- no. Uholo/Rambula/530 (suit property). That there exists a dispute before Ukwala ELC NO. E034 OF 2023 Michael Owuor Ochieng (suing on his own behalf and on behalf of the Estate of the late Paul Ochieng Owuor) -versus- Peter Odero. Oor and Antonina Sarabai, involving the same parties in relation to the suit property herein.
3. It is deponed that through the advice of his advocates on record he filled an application dated 19th April 2024 in the above suit Ukwala ELC NO. E034 OF 2023 seeking for orders that the Honourable court to stay its proceedings pending determination and hearing of the claim before the said court since both cases involved the same land parcel title. The application is annexed as POO-1. That the application was dismissed in a ruling dated 2/10/2024 advising that reliefs be sought from this court. A copy of the ruling is annexed as POO-2.
  4. The deponent avers that it is in the interest of justice and efficient judicial time to stay the proceeding in Ukwala ELC NO. E034 OF 2023 Michael Owuor Ochieng(suing on his own behalf 7. 8. 9. and on behalf of the Estate of the late Paul Ochieng Owuor) - versus- Peter Odero Oor and Antonina Sarabai, to allow this Honorable court to deal with the issue of title ownership first before dealing with any other issues arising from the suit property.
  5. It is deponed with advise of this advocates on record that issues on adverse possession can only be adjudged before the Environment and Land Court which is the court with proper jurisdiction to entertain the issue. That if the issue before this court is settled, it will subsequently settle the issue of eviction before Ukwala ELC NO. E034 OF 2023 Michael Owuor Ochieng (suing on his own behalf and on behalf of the Estate of the late Paul Ochieng Owuor) -versus- Peter Odero Oor and Antonina Sarabai, its therefore prudent to stay the proceedings before Ukwala,
  6. The applicant states that if the orders , are not granted, he stands to suffer irreparably since the Respondent/Defendant was keen to evict him from the suit property.

### **Replying Affidavit**

7. The application is opposed by the Replying affidavit sworn by Michael Owuor Ochieng, on 25/11/2025. It is deponed that the application is a gross abuse of court process, brought only after the Applicant was served with Ukwala ELC NO. E034 OF 2023 seeking orders of eviction for trespass and permanent injunction. That prior to being served with the said suit, the Applicant had made no attempt whatsoever to pursue any claim of adverse possession or to challenge the deponent's late father's title. That the Applicant is attempting to derail the Ukwala matter at the very last stage, after realizing that he must now testify as the Defendant in the eviction matter.
8. It is deponed that instead of filing a defence and counterclaim in Ukwala ELC NO. E034 OF 2023, the Applicant elected to: a) file an application and/or P.O on having the entire suit struck out in Ukwala which was dismissed, file an OS for adverse possession in this Honourable Court, file another stay application for proceedings in this court which he prematurely withdrew, filed another stay application for stay of proceedings in Ukwala which was dismissed, filed a stay application for proceedings in this court after the respondents in Ukwala had already proceeded and the Plaintiff's case closed.
9. It is contended that the applicant cannot litigate his case in instalments. Further that the proper forum for the Applicant's alleged claim of adverse possession is by way of defence and counterclaim in the pending suit in Ukwala, not through a parallel Originating Summons after the Applicant has slept on his rights for years. The OS is termed fatally defective, time-wasting and contrary to the overriding objective under Sections 1A & 1B of the [Civil Procedure Act](#). The Applicant cannot now claim parallel proceedings when he is the one who created the second suit, and only after failing to stop the first one.



10. Finally it is averred that the Applicant is already a Defendant in the eviction suit, and he has a full opportunity to present his defence and any counterclaim therein. The Plaintiff's case has already been heard and closed. That the Defence case had been set down for hearing on 15th December, 2025. There's no prejudice to be suffered. That an order of stay is draconian and can only be granted sparingly. That the Applicant has failed to demonstrate how the trial court in Ukwala lacks jurisdiction to deal with his claim of adverse possession and/or he will suffer prejudice that cannot be cured by participation in that suit. That the Applicant's actions show a deliberate pattern of delay and forum shopping.
11. The court is invited to dismiss the application.

### **Submissions**

12. Ms Achieng for the respondent relied entirely on their replying affidavit while the applicant did not file submissions. The court proceeded to determine the application on the affidavits filed.

### **Analysis And Determination**

13. I have read the affidavits sworn in support of the application and those sworn in reply. The main issue for determination is whether the application meets the threshold for grant of orders of stay of proceedings and what orders should commend in the circumstances of this case
14. The application is brought under the provisions of Section 1A & 1B of the *Civil Procedure Act*, Order 42 Rule 2 & Order 51 Rule 1 of the Civil Procedure Rules 2010.
15. Order 42 Rule 6 of the Civil Procedure Rules, 2010 as follows; -  
Order 42 Rule 6(1) of the Civil Procedure Rules: -  
“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.  
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.”
16. Although the Sub-rule 1 mentions both the stay of execution and stay of proceedings, the conditions given under Sub-rule 2 apply solely to stay of execution pending appeal and not stay of proceedings.
17. The question of whether or not to grant an order for stay of proceedings is a discretionary one. This discretionary power must be exercised judiciously.



18. I'm alive to the fact that stay of proceedings is a serious matter as it stops the progression of case before judgement is delivered. This could hamper access to justice and therefore courts are enjoined to exercise such discretion sparingly- See Halsbury's Laws of England, 4th Edition, Vol. 37 at p. 330, that:

The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court's general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue.

19. Therefore, the pertinent question is should the proceedings in Ukwala court to be allowed to continue? Are there any exceptional circumstances that would warrant the exercise of this discretion?

20. It is not in dispute that the proceedings in Ukwala involve the same land parcel land parcel no. UHOLO/RAMBULA/530 (suit property) and the same parties. The point of departure is that in the said suit the Respondent in the present proceedings and application is the Plaintiff suing the Applicant in the present proceedings for trespass seeking for his eviction.

21. On the other hand the present proceedings commenced by Originating summons where the Applicant claims under the doctrine of adverse possession pursuant to the Limitation of Actions Act Chapter 22 of the laws of Kenya to be registered the proprietor as against the registered owner who is the Plaintiff in the proceedings at Ukwala.

22. Indeed, there was an attempt to stay the proceedings by the applicant herein at the Magistrates court. The learned Magistrate in dismissing the applicants application dated 19/4/2024 seeking to stay the proceedings that are pending before the Court at Ukwala pointed interlia that, if the applicant was convinced that the trial court had no jurisdiction to deal with the Originating Summons he ought to have moved the ELC (High Court) at Siaya seeking orders to stay the proceedings filed in Ukwala. Alternatively, he ought to have sought to transfer the same to the ELC Siaya by way of an application. However, the trial court pointed out that the filing of the proceedings in ELC Siaya was an abuse of court process and a ploy to frustrate the disposal of the matter.

23. The court has noted the contestations by the Respondent herein against the applicant whose conduct is stated is meant to frustrate the progression of the defence hearing in the trial court. At a glance indeed it would appear so. There are also procedural issues that I have noted some as raised above which I do not entirely agree with as the same would still pose a challenge.

24. I will still pose the question whether the proceedings must be stayed or not and on what basis.

25. It is now established that the question of whether the Magistrates court is seized with jurisdiction has been settled by the Court of Appeal in the case of Pauline Chemuge Sugawara Vs Nairuko Ene Mutarakwa Kiruti (2024) KECA 1417 (KLR). where the learned appellate judges clarifying the law held that notwithstanding the expansion of the jurisdiction of environment and land usage to the Magistrates Courts, it is instructive that under Section 9 (a) of the Magistrates Court Act, various matters are specified for determination, but claims for adverse possession are not included in that section and that, it is only the Environment and Land Court which has jurisdiction to hear and determine claims for adverse possession.

26. Therefore, assuming the applicant sued as Defendant in the proceedings at Ukwala raised a defence of adverse possession and sought that he is registered as owner by dint of adverse possession, the trial court would not be seized of jurisdiction to determine the Counterclaim. Infact it would be void abnatio.



27. Again, at the same time can the two matters be separated? This is the other point I had to grapple with in view of the fact that the suits relate to the same suit properties and the same parties. It would be dangerous to have parallel proceedings in the lower court and the High Court. It is urged that a determination of the Originating summons would determine and settle the issues of eviction raised in Ukwala and basically the ownership of the suit property.
28. I pondered over what if the suit in Ukwala were to proceed, of course either of the parties if aggrieved have a right of appeal before this court. The court would then find itself in an embarrassing situation where it would be sitting on appeal on the suit property while at the same time faced with the suit commenced before it by the OS. Very unpleasant indeed.
29. Further is stay of the proceedings in the trial court a solution? In my view it is not a solution because there is the option to transfer the file to this court and subject to appropriate directions proceed with the two matters concurrently.
30. The jurisdiction of the High Court to transfer suits from one Court to another is provided under Section 18 of the *Civil Procedure Act* which states as follows- “
1. On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage— a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same;
  2. or b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter— i try or dispose of the same; or  
c transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
  3. retransfer the same for trial or disposal to the court from which it was withdrawn. (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”
31. Arising from the above and the ELC being a court of equal status with High Court and by dint of Article 162(2) (b) of *the Constitution* is conferred with powers to withdraw and transfer cases instituted in subordinate court to it for hearing and determination. I think in this way justice can be seen to be done for both parties. Staying the proceedings in the lower court would not be the best trajectory.
32. The application dated 29/10/2025 is therefore disposed in the following terms;
1. Invoking the courts inherent jurisdiction and the powers under section 18 of the *Civil Procedure Act* an order hereby issues withdrawing and transferring the case Ukwala ELC NO. E034 OF 2023 Michael Owuor Ochieng (suing on his own behalf and on behalf of the Estate of the late Paul Ochieng Owuor) - versus- Peter Odero Oor and Antonina Sarabai to this court for hearing and determination.
  2. That upon the above, the two files Ukwala ELC NO. E034 OF 2023 and the file in the present suit shall be placed for Mention before this court for further directions.
  3. The costs of this application are awarded to the Respondents in the present application.

**DATED AT SIAYA THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2026**

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



**JUDGE**

**10/02/2026**

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

Mr. Obiero for Plaintiff Applicant

Ms. Ochieng for the Respondent

Court assistant: Elisha Mboya

