



Kumba (Suing as the Administrator of the Estate of Margaret Adhiambo Kumba) v Ogada (Environmental and Land Originating Summons E005 of 2026) [2026] KEELC 1340 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1340 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2026**

E ASATI, J

FEBRUARY 19, 2026

IN THE MATTER OF: TITLE KNOWN AS KISUMU/KONYA/3202

AND

IN THE MATTER OF: APPLICATION FOR DECLARATION THAT THE APPLICANT HAS OBTAINED OWNERSHIP OF THE SAID LAND BY WAY OF ADVERSE POSSESSION

BETWEEN

FRANCIS KOLA KUMBA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MARGARET ADHIAMBO KUMBA) APPLICANT

AND

PILISTER KINGA OGADA RESPONDENT

RULING

In The Matter Of: Application For Declaration That The Applicant Has Obtained Ownership Of The Said Land By Way Of Adverse Possession

1. The Notice of Motion Application dated 26/1/2026 seeks for an order of stay and/or suspension of all proceedings in CMC ELC No. E042 OF 2025 Pilister Kinga Ogada – Vs – Cynthia Kumba and Martin Odongo Nyauchu at Winam Law Courts pending hearing and determination of the Originating Summons (the suit) herein.
2. The application was supported by the averments in the Supporting Affidavit sworn by the Applicant on 26/1/2026.
3. The Applicant's case is that he is the Administrator of the Estate of Margaret Adhiambo Kumba, who died on 14/6/2025. That the Respondent had been harassing the deceased, seeking to evict her from



the land parcel No. Kisumu/konya/3202, where the deceased and her family had been occupying for nearly 30 years.

4. That case No. E042 of 2023 at Winam court is ongoing. That the Defendants in the Winam case are the sister and uncle of the Applicant. That it is in the interest of justice that the case at Winam be stayed or held in abeyance pending the outcome of the suit herein. That unless the orders sought are granted, the Applicant herein stands to suffer irreparable loss and damage as his family will be subjected to two (2) suits over the same subject matter for no reason, thus wasting the court's time.
5. The Application was opposed vide the contents of the Replying Affidavit sworn by the Respondent on 3rd February 2026. The Replying Affidavit was annexed a copy of the judgment in KSM CMC ELC No. E058 of 2022, in which the court upheld the respondent's title to the suit land and issued an order of eviction and permanent injunction against the deceased.

The application was heard orally.

6. I have considered the application, the contents of the Replying Affidavit in opposition thereto, and the submissions.
7. It is clear that the suit herein and the suit at the Winam court, whose proceedings are sought to be stayed, are related to the concluded Case No. E058 of 2022, as all the suits concern the same subject matter. It appears from the judgment attached to the Replying Affidavit that the issue of ownership was determined in that case, and there is a valid judgment in favour of the respondent in respect of the suit land. There is no evidence that the judgment has been reviewed, set aside or appealed against.
8. The Originating Summons herein is anchored partly on the claim by the applicant that the counterclaim before the trial court on adverse possession was dismissed for want of jurisdiction. This is a matter to be canvassed in the prosecution of the Originating Summons
9. For purposes of the present application, the court notes that the applicant herein is not a party in the suit whose proceedings are sought to be stayed. As such, he has no locus standi to interfere with the prosecution of the suit at the Winam court. No explanation was tendered as to why the parties in the said suit could not file the application in the suit.
10. It has not been demonstrated how proceeding with the suit will hinder the plaintiff/applicant's claim based on adverse possession herein. No proceedings or pleadings in respect of the said suit were exhibited herein to demonstrate what the cause of action is and how far prosecution of that case is.
11. The grounds for the grant of an order of stay of proceedings are stringent. In *Kenya Wildlife Service Vs James Mutembei (2019) eKLR*, Gikonyo J held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent”.

12. For the foregoing reasons, I find that the application is misconceived and that the same lacks merit. The Application is dismissed. Each party to bear its own costs of the Application.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, DELIVERED THIS 19TH DAY OF FEBRUARY, 2026 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.



E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Ndungu h/b for Omollo for the Applicant.

Odhiambo h/b for Mwamu SC for the Respondent.

