



**Okombo v Ajwang (Civil Appeal (Application) E148 of 2024)
[2026] KECA 783 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 783 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL (APPLICATION) E148 OF 2024
HA OMONDI, LK KIMARU & F TUIYOT'T, JJA
APRIL 24, 2026**

BETWEEN

JOHN ODERO OKOMBO APPLICANT

AND

SAMSON OOKO AJWANG RESPONDENT

(Being an application for stay of execution from the Judgement of the Environment and Land Court of Kenya at Homa Bay (G.M.A. Ong'ondo, J) dated 12th March, 2024 in ELC Case No. E010 of 2023)

RULING

1. The applicant moved this Court by notice of motion made under “Section 17(1), 18(2) and 2 of the Land Registration Act 2012, Section 1B and 78 of the Civil Procedure Act, Order 42 Rule 6(1) and (2) of the Civil Procedure Rules and all the enabling sections of the law ” seeking to be granted stay of execution “of the orders and decree emanating from the purported consent Judgment dated 13th July, 2010 in the former Land Case No. 10 of 2008 consolidated with land Case No, 100 of 2008 delivered at Kisii High Court and the subsequent ruling of the learned Justice GMA Ong’ondo delivered on 12th March 2024 in the Environment and Land Court at Homa Bay in ELC No. E010 of 2023.” The applicant prayed that the said orders and decrees be stayed pending the hearing and determination of the appeal. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit and a further affidavit of John Odero Okombo, the applicant.
2. The application is opposed. The respondent filed what he referred to as “notice of preliminary objection” in which he essentially states that the application offended the principle of Res-judicata as the issues raised in the application had already been adjudicated upon by courts of competent jurisdiction and binding decisions made. The respondent therefore urged the Court to summarily



dismissed the application with costs to the respondent. He also filed a replying affidavit in opposition to the application.

3. Prior to the hearing of the application, both the applicant and the respondent filed written submissions in support of their respective opposing positions. The applicant and the respondent further made oral submissions during the plenary hearing of the application.
4. We have considered the application, the affidavits filed both in support and in opposition to the application. There is an issue that came to the fore for our preliminary determination; whether the present application is res-judicata. According to the litigation history of the dispute between the applicant and the respondent (by themselves or through those whom they claim title), the starting point for the purpose of this Ruling is Kisii High Court Civil Case No. 100 of 2008. In this case, the Court (Makhandia, J, (as he then was) declared the respondent's parent to be the lawful owner of LR NO. Kanyamwa/Kochieng/Komungu/Kakaeta/169 (the suit property). An order was issued for the applicant's eviction from the suit property. He was further restrained by permanent injunction from reentering the suit property. This decision was not challenged on appeal. It is still a valid and enforceable decree of the Court.
5. Undeterred, the applicant filed another suit against the respondent being Homa Bay Environment and Land Court (ELC) Case No. E010 of 2023 (OS), in which he sought to have the above decision, among others, set aside on the grounds that he was the legal owner of the suit property. It did not matter that the suit was filed in a court which had similar jurisdiction with the High Court which had earlier rendered its decision. A preliminary objection to the suit was raised by the respondent on the grounds that the suit was res-judicata. The preliminary objection was upheld. The suit was dismissed.
6. In the material part of the Ruling, GMA. Ong'ondo, J held thus:
 - “19. The entire replying affidavit, the originating summons, the further affidavit and the defendant's submissions reveal that the same dispute involving the same parties and the suit land, has been litigated and determined by courts of competent jurisdiction. Therefore, this suit is an abuse of the process of the court as litigation cannot be endless.
 20. The cardinal principle is that litigation has to come to an end; See Halsbary's Laws of England 4th Edition Volume 22 page 272.
 21. In conclusion, it is the considered view of this Court that the suit is res-judicata as noted in Black's Law Dictionary and section 7 of the *Civil Procedure Act* (both supra). I proceed to uphold the preliminary objection captured in the defendant's replying affidavit at paragraphs 3,9,10,14 and 15.”
7. It is against this decision that the applicant wishes to exercise his right of appeal to this Court. Pending the hearing of the intended appeal, he filed this application seeking to stay the execution of the said Judgment.
8. It is evident that the applicant's application, though predicated on statute and the *Civil Procedure Act*, is actually seeking the exercise of this Court's Jurisdiction under Rule 5(2)(b) of the Court of Appeal Rules. For an applicant to succeed in an application under this Rule, he must establish the twin principles of arguability and the nugatory aspect. (See Stanley Kangethe Kinyanjui v. Tony Ketter & 5 others [2013] KECA 378 (KLR).



9. In the present application, compelling evidence was placed before us which established that the dispute that the applicant wishes to adjudicate before this Court is res judicata. There are several decisions of this Court which have declared the suit parcel of land to be the respondent's property. Prima facie, the applicant will have to surmount this legal hurdle to prove that he has an arguable appeal to enable us exercise our jurisdiction in his favour. Without prejudice to the Court that will hear the intended appeal, we are of the view that the intended appeal does not raise any arguable issues capable of consideration by this Court. Secondly, the order that the applicant wishes to stay, is a negative order which is incapable of being stayed. For the above reasons, we need not consider the other limb whether the intended appeal will be rendered nugatory if the orders craved for in the application is not granted.
10. The application lacks merit and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

H.A. OMONDI

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JUDGE OF APPEAL

F. TUIYOTT

.....

JUDGE OF APPEAL

L. KIMARU

..... **JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

