



**Ayugi v Odero (Environment and Land Appeal E015 of 2023)
[2024] KEELC 683 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 683 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E015 OF 2023**

E ASATI, J

FEBRUARY 15, 2024

BETWEEN

SYMON ABWAO AYUGI APPELLANT

AND

BYROS ODERO RESPONDENT

(Being an appeal from the Judgement/Decree dated 14th September, 2022 in Chief Magistrate's Court ELC No.E091 of 2023 – Symon Abwao Oyugi (Plaintiff) v Byros Odero (Defendant))

RULING

1. This ruling is in respect of the Notice of Motion application dated 18th September, 2023 brought pursuant to the provisions of Section 1A, 1B & 3A of the [Civil Procedure Rules](#) and Order 51 rule 1 [Civil Procedure Rules](#). The application seeks for orders that the honourable court be pleased to grant the applicant a temporary stay of execution of the decree and of interring the deceased's body in land parcel number Kisumu/kadero Got Nyabondo/2886 pending the hearing and determination of the appeal.
2. The application was based on the grounds that the applicant has filed an appeal which is pending hearing and determination. That the Respondent was planning to bury the deceased's body on land parcel number Kisumu/kadero Got Nyabondo/2886. That Mr. Oguso Gilbert Obure Advocate was not properly on record and/or updated in license. That if the order of stay of execution of the decree is not granted, the applicant's entire appeal process will be rendered nugatory. That the applicant has an arguable appeal. That the Respondent will not suffer any prejudice whatsoever. That the applicant is ready and willing to abide by any terms imposed by the court and or to give security for the due performance of the decree. That in the interest of justice, a stay of execution of the decree be granted to the applicant to avoid rendering the appeal nugatory.



3. The application was supported by the averments in the Supporting Affidavit sworn by Symon Aswao Ayugi on 18th September, 2023.
4. The application was not opposed.
5. When the application came up for hearing on 21st September, 2023 parties were granted leave to file further pleadings as sought and directions were given that the application be canvassed by way of written submissions. However, as at 2nd November, 2023 when the matter was reserved for ruling none of the parties had complied with the directions.
6. The grounds for grant of orders of stay of execution of decree/judgement as provided for in Order 42 rule 6(2) *Civil Procedure Rules*, 2010 are that:
 - 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.
7. The court must be satisfied that the Applicant will suffer substantial loss if the order of stay of execution is not granted.
8. The burden of proof lies with the Applicant to prove that substantial loss will result to him/her if the order sought is not granted. In the case of *Charles Wabome Getbi vs Angela Wairimu Getbi* [2008]eKLR the Court of Appeal held-

“...it is not enough for the Applicants to say that they live or reside on the suit land and that they will suffer substantial loss. The Applicants must go further and show the substantial loss that the applicants stand to suffer if the Respondent execute the decree in this suit against them”
9. None of the grounds provided for in order 42 rule 6(2) have been demonstrated herein. No copy the judgement or decree is annexed to the application to demonstrate to the court that there exists a judgement/decree to be stayed. No evidence was placed before court that the Respondent is planning to inter the body of the deceased on the suit land. The application was not substantiated on by way of submissions.
10. The court finds that the application lacks merit and is hereby dismissed. No orders as to costs as the application was not opposed.

RULING, DATED AND SIGNED AT KISUMU AND READ VIRTUALLY THIS 15TH DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

No appearance for the Appellant/Applicant

No appearance for the Respondent.

