



**Obiero t/a C Obiero & Associates Advocates v Okeno & 2 others  
t/a Okeno & Sons Building Contractors (Civil Application  
E065 of 2024) [2025] KECA 319 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 319 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E065 OF 2024  
HA OMONDI, F TUIYOT'T & LK KIMARU, JJA  
FEBRUARY 21, 2025**

**BETWEEN**

**CLIFFORED OTIENO OBIERO T/A C OBIERO & ASSOCIATES  
ADVOCATES ..... APPLICANT**

**AND**

**ROMANUS OKENO, PAUL OKENO & JOSEPH OKENO T/A OKENO & SONS  
BUILDING CONTRACTORS ..... RESPONDENT**

*(Being an Application for reinstatement of the interim orders from this Court (Makhandia, Omondi & Kimaru, JJ) dated 15th October, 2024 in H.C Misc. (OS) No. E085 of 2023)*

**RULING**

1. The Applicant, Clifford Otieno Obiero is an advocate of the High Court of Kenya t/a C.Obiero & Associates Advocates. He was aggrieved by a Ruling rendered by the Court (Kiarie W. Kiarie, J) in Homa Bay High Court Misc. Civil Application No. E085 of 2023. He moved this Court in a Notice of Motion essentially made under Rule 5(2) of the [Court of Appeal Rules](#) seeking an order of the Court to stay the proceedings and the execution that would have ensued pursuant to this Court's Order/ Ruling issued on 14<sup>th</sup> March, 2024. In the said Ruling, the trial court declined to grant the applicant's application which had sought the recusal of the trial court.
2. The application was heard by this Court on 15<sup>th</sup> October, 2024 in the absence of the respondent, who was served but failed to attend the virtual Court. The Ruling was reserved for 7<sup>th</sup> March, 2025. Pending delivery of the said Ruling, this Court granted interim stay of proceedings before the trial Court.
3. When the respondent was served with the order, he filed an application dated 31<sup>st</sup> October, 2024 under Rule 49 of this [Court's Rules](#) seeking orders of this Court to set aside, vary and or vacate the interim orders staying proceedings before the High Court that was issued by this Court. The respondent



explained that he failed to attend the virtual session of this Court on 15<sup>th</sup> October, 2024 due to challenges he faced in logging into the virtual platform. He therefore urged this Court to set aside the proceedings of that day and re-hear the application on its merit. The applicant filed a replying affidavit in opposition to the application.

4. When the application came up for plenary hearing on 20<sup>th</sup> January, 2025, the parties, represented by learned counsel Mr. Obiero and Mr. Agwara, compromised both the application that was before the Court, and the earlier application which had been heard in the absence of the respondent and a Ruling reserved for 7<sup>th</sup> March, 2025.
5. In the premises, therefore, the application having been compromised by consent of the parties, this application is hereby marked as settled with no order as to costs.

**DATED AND DELIVERED AT KISUMU THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

SIGNED

**DEPUTY REGISTRAR.**

