



**Ongaga v Mirambo & 2 others (Civil Application E279 of 2023)
[2025] KECA 645 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KECA 645 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E279 OF 2023
HA OMONDI, F TUIYOTT & LK KIMARU, JJA
APRIL 4, 2025**

BETWEEN

WILFRED MORARA ONGAGA APPLICANT

AND

JOSEPH MIRAMBO 1ST RESPONDENT

SUB-CHIEF/SIAMANI SUB-LOCATION 2ND RESPONDENT

HON ATTORNEY GENERAL 3RD RESPONDENT

*(Being an Application for stay of execution from the judgment of
the Environment and Land Court of Kenya at Nyamira (Mugo
Kamau, J) Dated 12th October, 2022 in E.L.C No. E015 of 2022)*

RULING

1. By a notice of motion dated 19th August 2024, Wilfred Morara Ongaga, the applicant herein, (who is acting in person) sought essentially orders of stay of execution of the judgement and decree of the Environment and Land Court. The applicant claims that the respondents were in the process of evicting him from the suit parcel of land in execution of the judgment made in the respondents' favour. The applicant was apprehensive that if the order craved for is not granted, he would be evicted from his home before the appeal is heard and determined. The application is supported by the annexed affidavit of the applicant and annexures thereto which are photographs showing some demolished structures.
2. The application is opposed. The 1st respondent Joseph Ondicho Mirambo swore a replying affidavit in opposition to the application. In the affidavit, the 1st respondent swore that he had not demolished the applicant's house as alleged in this application. He deponed that he was the absolute owner of the suit parcel of land being Land Reference No. West Mugirango/Samani/8277 since 27th July, 2016. The 1st respondent explained that it is the applicant who had frustrated him from peaceful enjoyment



of the suit parcel of land by vandalizing his property and even cultivating it. He annexed a copy of the proceedings before the Chief Magistrate's court in Criminal Case No. 1261 of 2020 where the applicant was convicted and ordered to pay compensation to the 1st respondent of Kshs.20,000 or in default he was to serve one (1) year imprisonment. He urged the Court to dismiss the application for lack of merit.

3. The applicant and the 1st respondent filed written submissions in support of their respective opposing positions. During plenary hearing, the applicant and Mr. Omwega, learned counsel for the 1st respondent informed the Court that they would be relying on the written submissions and would add nothing in terms of oral submissions.
4. As indicated at the commencement of this Ruling, the applicant is acting in person. It is not clear from his application whether he is challenging the decision of the Magistrate's court or that of the Environment and Land Court. Neither the applicant nor the 1st respondent attached a copy of the Ruling that is intended to be challenged on appeal or the proceedings thereto to enable this Court glean what the dispute is all about.
5. We surmised that the applicant was seeking to invoke this Court's jurisdiction under Rule 5(2) of the Court of Appeal Rules. If that were the case, then for this Court to assume jurisdiction, a notice of appeal must be lodged in the appropriate superior court's registry under Rule 77 of this Court's Rules from which court the decision is intended to be appealed to this Court. Matters have not been helped by the fact that the 1st respondent is denying the assertion by the applicant that he demolished any property of the applicant in purported execution of a judgment and decree of the Environment and Land Court.
6. In light of this confused state of affairs, we are unable to discern, with certainty, whether we have jurisdiction, in the first place, to consider the applicant's application; and secondly, whether indeed there was any decision made by the Environment and Land Court, Nyamira capable of being stayed by this Court. The nature of that decision is not apparent to us since a copy of the decree or order was not annexed to the affidavit in support of the application by the applicant. Whereas we may excuse the applicant, being a layman who was acting in person, the same treatment cannot be afforded to the 1st respondent's counsel who ought to have placed the proper facts and pleadings before the Court. The 1st respondent's replying affidavit and written submissions were completely at variance that the only conclusion we reached is that this application was neither filed, prosecuted nor resisted with the seriousness and diligence it deserved.
7. The only order available to the Court, in such circumstances, is to dismiss the application but with no orders as to costs since the 1st respondent did not aid the court at all in putting the facts in support of or in opposition to the application in the proper perspective.
8. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 4TH DAY OF APRIL, 2025.

H. A. OMONDI

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

F. TUIYOTT

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

L. KIMARU

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



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

Signed

DEPUTY REGISTRAR.

