



**Osano & others v Osano & others (Civil Appeal (Application)
E154 of 2025) [2025] KECA 1465 (KLR) (5 August 2025) (Ruling)**

Neutral citation: [2025] KECA 1465 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL (APPLICATION) E154 OF 2025
MSA MAKHANDIA, JA
AUGUST 5, 2025**

BETWEEN

ARGWINGS MUGA OSANO & OTHERS APPLICANT

AND

**VITALIS OUMA OSANO ALIAS PETER OUMA OSANO &
OTHERS RESPONDENT**

*(Being an application for Stay of execution of the Judgment delivered at
Kisumu, (Okong'o J.) dated 26th June, 2025, in ELC Case No. E049 of 2021)*

RULING

1. This application came before me on 18th July, 2025, for certification that it was urgent. Upon perusal and consideration of the application, I was satisfied that it was not urgent and accordingly declined to certify it as such. By a letter dated 21st July, 2025, the applicant sought to be heard interpartes on the question of urgency. The file was again placed before me for directions in that regard. I subsequently issued directions that the application be served on the respondents for hearing interpartes strictly on the question of urgency and that, the question be determined by way of written submissions of the parties and without appearance of counsel.
2. I note from the record that the hearing notice dated 24th July, 2025, was served to all the parties to this application and were also directed to file and serve their respective written submissions. Whereas the applicants complied with the directions, the respondents and or their advocates appear to have ignored the directions as up to date, no submissions have been filed on their behalf. I would therefore take it that the respondents are not averse to the certification of the application as urgent. Thus, the only question for determination at this point is whether there is sufficient cause for the application to be certified urgent and be listed for hearing on a priority basis.



3. Much as the respondents have not reacted to the question of urgency, nonetheless, the question is not determined in a vacuum. Courts evaluate whether a party faces imminent prejudice that cannot be remedied if the application is heard in the ordinary course or in the normal manner. An application may be certified urgent where failure to hear it promptly would render the appeal nugatory or occasion irreversible harm to the applicant.
4. The applicant is apprehensive that there is imminent risk of execution of the Judgment and decree, and if allowed, will cause him irreversible harm. The impugned Judgment requires the applicant to remove cautions registered against the two parcels of land Kisumu Kanyakwar "B"/ 134 and Kisumu/ Kanyakwar "B"/135, ("the suit properties"). The removal of these cautions will open the way for possible alienation, transfer or encumbrance of the suit properties by the respondents. Once the said cautions are lifted, the status quo will be disrupted and should the appeal eventually succeed, it may be practically impossible to reverse the consequences. That the 1st respondent had already commenced felling trees on the suit properties, which action is not only destructive but also a clear indication of ongoing interference and imminent steps towards possible alienation or wastage of the suit properties. The continued implementation of the impugned judgment, before the application for stay is heard, therefore poses a serious and real threat to the substratum of the appeal. Trees that are cut cannot be restored, developments or changes made to the land will complicate or frustrate enforcement of any appellate Judgment, should the appeal succeed.
5. Having carefully considered the request, I note that Article 50(1) of the *Constitution* guarantees the right to a fair hearing. The delay in hearing the application for stay of execution increases the risk that the respondent may proceed with steps that would alter the legal and physical status of the suit properties forever.
6. The applicants seek no more than a temporary measure to fast track the hearing and determination of the application for stay of execution which may lead to Preserving the status quo which protects the integrity of the appeal process and ensures that neither party gains an unfair advantage.
7. Hearing the application for stay urgently will not prejudice the respondents, as all parties will be afforded an opportunity to address the Court. On the contrary, granting the urgency protects the integrity of the appeal proceedings and ensures that no party gains unfair advantage during the pendency of the appeal.
8. In light of all the foregoing, I am now satisfied that the application for stay of execution dated 10th July, 2025, is urgent, and I so certify.

DATED AND DELIVERED AT KISUMU THIS 5TH DAY OF AUGUST, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

