



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otieno v Ngani (Civil Appeal (Application) 67 of 2018)  
[2024] KECA 765 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KECA 765 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) 67 OF 2018**

**HA OMONDI, JA**

**JUNE 21, 2024**

**(IN CHAMBERS)**

**BETWEEN**

**MILKA AKINYI OTIENO ..... APPLICANT**

**AND**

**CHARLES ODONGO NGANI ..... RESPONDENT**

*(Being an application from the Judgment of the Court of Appeal at Kisumu (M'inoti, Kantai & Tuiyott, JJ.A.) dated 17th March 2023 in Civil Appeal No. 67 of 2018)*

**RULING**

1. The applicant in its submissions refers to an application dated 11<sup>th</sup> June 2022, although no such Notice of Motion has been availed to this Court, despite requests I made to the Court of Appeal Kisumu Civil Registry. The only document that comes close to what may be a replication of the contents in the intended application, is the certificate of urgency itself; the document refers to a judgment delivered on 17<sup>th</sup> March 2023, whose outcome has caused dissatisfaction to the applicant is dissatisfied and she intends to appeal.
2. She expresses apprehension that there is imminent threat of execution of the Judgment of the Environment and Land Court by the respondent pending the hearing and determination of the appeal to the Supreme Court. The applicant explains that she had initially been granted stay during the period which the matter was proceeding before the Court of Appeal but which stay lapsed upon the delivery of the Judgment of the Court thereby leaving the applicant exposed to execution by the respondent. She thus seeks orders of stay so as to ensure that the intended appeal to the Supreme Court (which has reasonable chances of success) is not rendered nugatory.
3. The respondent's replying affidavit is to an application for certification which is not attached nor uploaded.



4. Whatever the case, the nature of prayers sought, squarely places this matter under Rule 5(2)(b), which ought to be dealt as provided under Rule 55 as follows:

55.

(1) Each application, other than an application specified in sub-rule (2), shall be heard by a single judge:

Provided that such application may be adjourned by the judge for determination by the Court.

(2) This rule shall not apply to:

- a. an application for leave to appeal;
- b. an application for a stay of execution, injunction, or stay of further proceedings;
- c. an application to strike out a notice of appeal or an appeal; or
- d. an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of a hearing.

5. I therefore decline to deal with the matter as a single judge; and direct that the same be listed for hearing on priority before a full bench

**DATED AND DELIVERED AT KISUMU THIS 21<sup>ST</sup> DAY OF JUNE 2024.**

**H. A. OMONDI**

**JUDGE OF APPEAL**

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

signed

**DEPUTY REGISTRAR**

