



**Obange & another v Matoka (Environment and Land Appeal  
E005 of 2025) [2025] KEELC 892 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 892 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND APPEAL E005 OF 2025**

**E ASATI, J**

**FEBRUARY 26, 2025**

**BETWEEN**

**RAHAB ATIENO OBANGE ..... 1<sup>ST</sup> APPELLANT**

**EVANS ABONDO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SUSAN ADHIAMBO MATOKA ..... RESPONDENT**

**RULING**

1. The application before court for determination is the Notice of Motion dated 22<sup>nd</sup> January, 2025 seeking for an order that pending the hearing and determination of the appeal, there be stay of execution of the judgement in MC ELC No.E013 of 2023. The application also seeks for costs to be provided for.
2. The application was supported by the averments in the Supporting Affidavit of the Applicant sworn on 22<sup>nd</sup> January, 2025.
3. The application was opposed vide the contents of the Replying Affidavit sworn by Counsel for the Respondent on 17<sup>th</sup> February, 2024.  
The application was argued orally on 26<sup>th</sup> February, 2025.
4. The Applicant's case is that unless the orders sought are granted, the appeal shall be rendered nugatory. That if the execution proceeds, the Applicants will suffer substantial loss and shall be prejudiced. That the application had been brought without undue delay and that the Applicant undertakes to abide by any orders the court may deem just and fit to issue. That the 2<sup>nd</sup> Applicant who has possession of the suit land since the year 2023 and has invested heavily will suffer substantial loss if an order of stay of execution is not granted. That the Applicant is willing to abide by conditions the court may give on security. That the stay sought is intended to safeguard the subject matter of the suit pending appeal.



5. The case of the Respondent is that the application is fatally defective, an afterthought and an abuse of the court processes and that the Applicant does not have an arguable appeal. That the 1<sup>st</sup> Appellant sold the suit land to the Respondent who has since concluded payments of the same. That substantial loss had not been demonstrated. That the Applicants have not offered security as required under Order 42 Rule 6 *Civil Procedure Rules*.
6. I have considered the application, the Replying Affidavit and submissions. It is clear from the record that an appeal has already been filed. It is also clear from the annexures to the application that the judgement of the trial court ordered specific performance and permanent injunction against the Applicants. It was pleaded in the plaint that the 2<sup>nd</sup> Applicant had already entered the land and was putting up structures. It was submitted that the 2<sup>nd</sup> Applicant will suffer substantial loss if execution proceeds.
7. In the case of *Butt v Rent Restriction Tribunal* [1989]KLR 417 the court held that;
  - (a) the power of the court to grant or refuse an application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
  - (b) the general principle in granting a stay is; if there is no other overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory”
8. While the Respondent is eager to execute the decree and reap the fruits of the judgement, the Appellants are eager to have the suit property preserved pending hearing and determination of the appeal to avoid the appeal being rendered nugatory. The court is required to strike a balance on these conflicting interests and for the interest of justice.
9. Considering the nature of the judgement appealed against, and the grounds of the application, the court is satisfied that it is important to preserve the status quo of the suit land pending appeal.
10. The application is therefore hereby allowed on the condition that the Applicants deposit a sum of Kshs.200,000/= being security for the due performance of such decree or order as may ultimately be binding on them, in an interest earning account in the joint names of Counsel for the Applicants and Counsel for the Respondent within 45 days hereof, failing which the stay order hereby granted shall lapse.
11. Cost of the application to the Respondent.  
Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 26<sup>TH</sup> FEBRUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Ang'ielia for the Appellants/ Applicants.

Akinyi for the Respondent.

