



**Odindo v Odindo (Environment & Land Miscellaneous Case  
E005 of 2024) [2024] KEELC 4614 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4614 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT & LAND MISCELLANEOUS CASE E005 OF 2024  
GMA ONGONDO, J  
JUNE 11, 2024**

**BETWEEN**

**CLEMENT TOKO ODINDO ..... APPLICANT**

**AND**

**MICHAEL ASETO ODINDO ..... RESPONDENT**

*(Memorandum of Appeal out of the Statutory period, against the  
Judgment of Hon. E.M Onzere delivered on 28th day of November 2023  
vide NDHIWA PRINCIPAL MAGISTRATE MCE LC NO. 16 OF 2019.)*

**RULING**

1. By a notice of Motion application dated 7<sup>th</sup> March 2024, the applicant through L.K Obwanda and Company Advocates, is seeking the following orders;
  - a. The Honourable Court be pleased to grant Leave to the Applicant herein to file and/or mount a Memorandum of Appeal out of the Statutory period, against the Judgment of Hon. E.M Onzere delivered on 28<sup>th</sup> day of November 2023 vide Ndhiwa Principal Magistrate MCE LC NO. 16 OF 2019.
  - b. That pending the inter-partes hearing and determination of the intended Appeal, this Honourable Court be pleased to stay the execution of the Judgment herein delivered on the 28<sup>th</sup> day of November, 2023 and all the Consequential Orders therein.
  - c. That this Honourable Court be pleased to grant leave to the Applicant herein to adduce, produce new evidence in the intended appeal.
  - d. That the Costs of this Application be in the cause.



2. Mr. Ojala learned counsel for the respondent has informed this court that:

“We filed Replying Affidavit sworn and uploaded on 6<sup>th</sup> May 2024. We can concede to the Notice of Motion subject to applicant depositing a security for costs to be determined by court”.

3. Counsel further has stated;

“The issue is costs to enable us dispense with or dispose of this application. Any amount can do as security for the due performance of the decree Order herein”.

4. On her part Ms. L.K Obwanda learned counsel for the respondent states:

“My client is visually challenged and I do pro bono in this matter. I can deposit Kshs. 10,000/- as security and order Nos. 3 and 4 in the Notice of Motion dated 7<sup>th</sup> March 2024 be granted”.

5. Upon hearing Counsel for the respective parties in respect of Notice of Motion dated 7<sup>th</sup> march 2024, it is hereby ordered and directed thus;

- a. The Notice of Motion is allowed in terms of Orders 3 and 4 sought therein and as set out at paragraph 1(a) and (b) hereinabove.
- b. The applicant’s Counsel to file and serve memorandum of appeal out of time within the next 7 days from this date as well as deposit Kshs. 10,000/- (Ten Thousand Only) being security for the due performance of the decree in court within the said period, in default, these orders shall lapse automatically without further orders;
- c. Costs of the application to abide the outcome of the prespective appeal.

6. It is so ordered.

**DELIVERED AND SIGNED AT HOMA BAY THIS 11<sup>TH</sup> DAY OF JUNE 2024.**

**G.M.A ONG’ONDO**

**JUDGE**

PRESENT.

- a. Ms. L.K Obwanda, learned counsel for the applicant.
- b. Mr. Ojala learned counsel for the respondent.
- c. Mutiva, court assistant.

