



**Okoth v Kutu & 2 others (Environment and Land Appeal
E028 of 2023) [2025] KEELC 773 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 773 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E028 OF 2023**

E ASATI, J

FEBRUARY 20, 2025

BETWEEN

PENINA AKINYI OKOTH APPELLANT

AND

GEORGE OTIENO KUTU 1ST RESPONDENT

LAND REGISTRAR KISUMU 2ND RESPONDENT

THE HONORABLE ATTORNEY GENERAL 3RD RESPONDENT

(Appeal against a portion of the judgement and decree of the Honourable K.Cheruiyot Senior Principal Magistrate in Kisumu CM ELC No.159 of 2018 delivered on 3rd October, 2023)

RULING

1. What the applicant seeks vide the Notice of Motion application dated 18th November, 2024 brought pursuant to the provisions of section 1A, 1B of the *Civil Procedure Act* Cap 21 and Order 42 Rule 6(1) of the *Civil Procedure Rules* 2010 is for an order that there be stay of execution of the trial court's judgement in Kisumu CM ELC No.159 of 2018 delivered on 8th June, 2023 and/or stay of assessment of the 1st Respondent's bill of costs pending hearing and determination of the intended appeal to the Court of Appeal.
2. The application was supported by the averments in the Supporting Affidavit sworn by the Applicant on 18th November, 2024 and the annexures thereto.
3. The application was opposed vide contents of the Replying Affidavit sworn by George Otieno Kutu on 29th January, 2025.

The application was argued orally on 29th January, 2024.



4. I have considered the application, the contents of the Replying Affidavit and the oral submissions made.
5. The Applicant's case is that the appeal before this court has been determined and the Applicant being dissatisfied with the judgement has lodged a Notice of Appeal hence intending to appeal to the Court of Appeal. She now seeks that this court stays execution of the judgement of the lower court pending the appeal to the Court of Appeal.
6. There is no indication that the same application has been made to the lower court where the matter is pending execution. The trial court has powers to consider the application. I find that the application is improperly before this court. The application is dismissed. No orders as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 20TH DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen- Court Assistant.

Raburu for the Respondent.

Akinyi for the applicants.

