



REPUBLIC OF KENYA



**Onduru v Alela (Environment and Land Appeal E020 of 2024)  
[2024] KEELC 13692 (KLR) (28 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 13692 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND APPEAL E020 OF 2024  
GMA ONGONDO, J  
OCTOBER 28, 2024**

**BETWEEN**

**BRIAN OMOLLO ONDURU ..... APPELLANT**

**AND**

**CHRLES O ODUNDO ALELA ..... RESPONDENT**

**RULING**

1. The instant ruling is in respect of an application by way of a Notice of motion dated 3<sup>rd</sup> October, 2024 by the appellant/applicant, Brian Omollo Onduru through Agure Odero and Company Advocates for orders infra;
  - a. That the honourable court be pleased to grant an order of stay which was issued on 23<sup>rd</sup> September 2024, which order upheld the one issued on 16/4/2024, pending the hearing and determination of the intended Appeal.
  - b. Cost of this application be borne by the respondent
  - c. Such further and /or other orders be made as the court may deem fit and expedient
2. The grounds of the application are, inter alia;-
  - i. The Ruling delivered on the 23<sup>rd</sup> day of September 2024, whereby the subordinate court upheld its earlier order of the 16<sup>th</sup> day of April 2024 that stopped the Applicant herein from working on parcel Kamangambo/Kanyajuo/954, is prejudicial in nature and is in breach of the Lease Agreement thereof.
  - ii. Pursuant to the ruling dated 23/9/2024, the applicant is bound to suffer loss considering the mega project of mining on site and the type of machines thereof.



- iii. The jurisdiction of the court is in question and it is proper and just that this court issue orders of stay of the trial court order dated 23/9/2024, pending the hearing of the Appeal herein.
3. It is trite law that a party to a case be made aware of the same to elicit any response from that party; see *Ogada v Mollin* (2009) KLR 620.
  4. Clearly, the application was served upon the respondent as revealed in the affidavit of service sworn on 25<sup>th</sup> October 2024 by Cephas Agure Odero learned counsel for the appellant/applicant. However, the respondent failed to respond to the application.
  5. Mr. Agure Odero learned counsel for the applicant has implored the court to grant order number 3 for stay as sought in the application.
  6. In the foregone, is the application meritorious to attract the prayer number 3 as stated on the face of the application?
  7. This appeal initiated by way of memorandum of appeal dated 3<sup>rd</sup> October 2024 contains triable issues which include; lease agreement, trespass, jurisdiction of the trial court over the matter.
  8. In that regard, the applicant is entitled to have the said issues heard on merit in the spirit of Articles 25 (c), 48 and 50 (1) of the *Constitution* of Kenya 2010.
  9. Moreover, I subscribe to the Court of Appeal decision in the case of Butt vs- Rent Restriction Tribunal (1979) eKLR that;  

‘.....the appellant has an undoubted right of appeal.....’
  10. I take into account that this court has the mandate to grant interim preservation orders inclusive of the stay sought in the application under section 13 (7) (a) of the *Environment and Land Court Act* 2015 (2011).
  11. Wherefore, the application is firm and meritorious. The same be and is hereby allowed in terms of the order of stay sought therein and as set out in paragraph 1 (a) hereinabove.
  12. Costs of the application to abide the outcome of this appeal.
  13. It is so ordered.

**DATED AND DELIVERED AT MIGORI THIS 28<sup>TH</sup> DAY OF OCTOBER 2024**

**G. M. A. ONGONDO**

**JUDGE**

In Presence of;

Mr Agure Odero learned counsel for the appellant/applicant

Tom- Court Assistant

