



Ondiek & another v Otieno & another (Environment and Land Appeal E078 of 2024) [2024] KEELC 13433 (KLR) (21 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13433 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E078 OF 2024**

E ASATI, J

NOVEMBER 21, 2024

BETWEEN

GRACE OCHAM ONDIEK 1ST APPELLANT

NOAH ONDIEK 2ND APPELLANT

AND

TERESA OTIENO 1ST RESPONDENT

WILLIS OCHIENG GWARA 2ND RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion application dated 24th September, 2024 brought by the Appellants pursuant to the provisions of section 1A, 1B, 3 and 3A of the [Civil Procedure Act](#) and Order 42 Rule 6 and Order 50 Rule 1 of the Civil Procedure Rules, 2010.
2. The application seeks for an order of stay of execution of the judgement delivered on 3rd September, 2024 in Kisumu Cm E & L Case No. E012 OF 2020 pending the hearing and determination of the appeal herein.
3. The grounds upon which the application was brought were that the Applicants were dissatisfied with the judgement and have filed the present appeal. That the Respondents have in meantime threatened to alienate, trespass onto and occupy the land. That the Applicants stand to suffer substantial loss and damage if the land is sub-divided and registered in the names of the Respondents as threatened. That the Applicants have an arguable appeal. The application was supported by the averments in the Supporting Affidavit of Grace Ocham Ondiek and the annexures thereto.
4. The application was opposed vide the contents of the Replying Affidavit sworn by Willis Ochieng Gwara on his own behalf and on behalf of the 1st Respondent. The Respondents' case is that the stay order being sought is not warranted as they are the rightful beneficiaries of the suit land.



5. The application was argued orally on 22nd October, 2024. I have considered the application, the response thereto and the submissions made.
6. The grounds for stay of execution pending appeal are provided for under Order 42 Rule 6 Civil Procedure Rules 2010 as follows: -
 - a. The court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay and
 - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”
7. To succeed in an application for stay of execution pending appeal, an applicant must demonstrate that unless the order of stay of execution is granted, he/she will suffer substantial loss, that he/she has brought the application without unreasonable delay and should give security for the due performance of such decree or order as may ultimately be binding on him.
8. In the present case, the judgement whose execution is sought to be stayed, a copy of which is attached to the Supporting Affidavit, ordered the Land Registrar and Surveyor to visit the disputed land and curve out the Plaintiffs’ portion as it is on the ground and the Defendants’ as it is on the ground. The court further ordered the Land Registrar and surveyor to sub-divide the land accordingly and issue titles to the parties respectively.
9. The Applicants aver that if this happens before their appeal is heard, they will suffer substantial loss as the land will have been subdivided and registered in accordance with the judgement appealed against.
10. I have considered the application and the opposition thereto. I find that an order of stay of execution is merited. I allow the application as follows: -
 - a. An order of stay of execution of the judgement dated 3/9/2024 in KISUMU CMC E & L CASE NO E012 OF 2020 is hereby granted pending hearing and determination of the appeal on condition that the applicant deposits in court, a sum of Kshs 100,000/- as security within 45 days hereof failing which the stay of execution order hereby granted shall lapse.
 - b. No orders as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 21ST DAY OF NOVEMBER, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Odhiambo Gwada for the Applicants.

Respondents present in person.

