



Ouko v Estate of Amondi Bunde & 2 others (Environment & Land Case 511 of 2015) [2024] KEELC 13431 (KLR) (21 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 511 OF 2015**

**E ASATI, J
NOVEMBER 21, 2024**

BETWEEN

DORIS ATIENO OUKO PLAINTIFF

AND

THE ESTATE OF AMONDI BUNDE 1ST DEFENDANT

JAMES OCHENG NYAYAL 2ND DEFENDANT

MODOCH ONYANGO OMONDI 3RD DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion dated 10th June, 2024 brought by the Plaintiff pursuant to the provisions of Section 3A and 3B of the *Civil Procedure Act*, order 9 Rule 9, order 42 Rule 6(2), Order 22 Rule 22 of the Civil Procedure Rules and article 159 of *the Constitution* of Kenya 2010.
2. The application seeks for orders that leave be granted to the firm of H. Obach & Partners Advocates to come on record for the Applicant given that Judgement has already been delivered and for an order that pending the hearing and determination of the Intended Appeal, an order of stay of execution of the judgement do issue.
3. The grounds upon which the application was brought as contained in the application and the Replying Affidavit are that the Applicant was dissatisfied with the judgement delivered herein on 2nd May, 2024 and has since filed Notice of Appeal and requested for certified proceedings for purposes of appeal to the Court of Appeal. That in the meantime, the Applicant is exposed to execution of the judgement by the Respondent and that eviction proceedings are eminent. That the appeal has high chances of success and that there has been no inordinate delay in filing the application.
4. The application was supported by the averments in the Supporting Affidavit sworn on 10th June, 2024.



5. The application was opposed vide the contents of the Replying Affidavit sworn by James Ochieng Nyayal on 27th August, 2024. The Respondent's case is that an order for stay of execution cannot issue where the order sought to be stayed was a dismissal. That the application is made in bad faith.
6. I have considered the application and the reply thereto. Prayer 2 of the application is not contested.
7. Regarding the prayer for stay of execution, it is the correct position as stated by both parties that the orders issued in the judgement whose execution is sought to be stayed were an order for dismissal of the suit and an order awarding costs to the Respondents.
8. The only aspect of the judgement that is therefore capable of execution is the order for costs. The costs are yet to be processed. In the case of *Western College of Arts And Applied Sciences Vs Oranga & Others* [1976] KLR 63 the Court of Appeal whilst considering whether an order of stay can be granted in respect of a negative order stated:-

“But what is there to be executed under the judgment? The subject of the intended appeal the High Court has merely dismissed the suit with costs. An execution can only be in respect of costs.....”

The High Court has not ordered any of the parties to do anything or to refrain from doing anything or to pay any sum. There is nothing arising out of the High Court Judgment for this court in an application for stay to enforce or restrain by injunction.”

9. And in *David Kipruto Chingi & Another vs Director of Public Prosecutions & 2 Others* [2016] eKLR where the Court observed that an application seeking stay of execution of a negative order was bound to fail.
10. I find that the grounds for grant of an order of stay of execution of judgements under Order 42 Rule (6) of the Civil Procedure Rules have not been demonstrated. The prayer for an order of stay of execution cannot therefore issue.
11. The application is allowed only in terms of pray 2 thereof. No order 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.

No appearance for the Plaintiff/applicant.

Omedo for the Defendants/Respondents.

