



**Ndalo v Sireno (Environment and Land Appeal 26 of 2018)
[2023] KEELC 73 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 73 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL 26 OF 2018
A OMBWAYO, J
JANUARY 19, 2023**

BETWEEN

WALTER OSUWO NDALO APPELLANT

AND

ROSE AMOLO SIRENO RESPONDENT

*((An appeal from judgment of Principal Magistrates Court at Bondo delivered by
Hon. M.O. Obiero PM on 15th October 2018 in Bondo ELC No. ELC No. 11 of 2018))*

RULING

1. The application before court in dated July 27, 2022. The appellant seeks orders that pending hearing determination of appeal at Kisumu, a stay of Execution do issue on the judgment delivered on July 15, 2022. The application is based on grounds that the appellant has lived on the suit property with family since the year 2004 hence Execution of the court order will really cause substantial loss and irreparable damage to the applicant/appellant.
2. The appellant is willing to comply with any term given by the court as a condition for the stay. The respondent in response states that this court cannot sit on its judgment on appeal and that the application is a delay tactic to deny the respondent fruits of its judgment.
3. I have considered the application and response and do find that it is not disputed that the appellant resides on the suit property since the year 2004 with his family. It is not disputed that the appellant home is adjacent to the respondent home. I do agree with the appellant if evicted from the home the appellant will suffer substantial loss.
4. The appellant has not come to court with inordinate delay as judgment was made on July 15, 2022. A 10-day lapse is not inordinate delay in the circumstances of this case. The appellant is willing to give security.



Order 42 rule 6 (2) provides:-



6.	<p>Stay in case of appeal [Order 42, rule 6.]</p> <table border="1"> <tr> <td data-bbox="558 302 638 1982">(2)</td> <td data-bbox="638 302 834 1982"> <p>No order for stay of execution shall be made under subrule (1) unless —</p> <p>(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</p> </td> </tr> </table>	(2)	<p>No order for stay of execution shall be made under subrule (1) unless —</p> <p>(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</p>
(2)	<p>No order for stay of execution shall be made under subrule (1) unless —</p> <p>(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</p>		



(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.

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has



	<p>been made without unreasonable delay; and</p>	<p>(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.</p>
<p>(2)</p>	<p>No order for stay of execution shall be made under subrule (1) unless—</p>	<p>(a) the court is satisfied that substantial loss may result to the applicant unless the</p>



		<p>order is made and that the application has been made without unreasonable delay; and</p>	
	(b)	<p>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.</p>	
(a)	<p>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</p>		
(b)	<p>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.</p>		



5. I am inclined to grant stay of Execution of the order of the court granted on July 15, 2022. I do grant orders that pending hearing determination of appeal at Kisumu, a stay of Execution do issue and is hereby issued on the judgment delivered on July 15, 2022 on condition that the appellant deposits in court security for costs valued at ksh One Hundred Thousand (ksh 100,000) or Cash of similar amount, within the next 30 days. Costs of the application to be in the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU THIS 19TH DAY OF JANUARY 2023.

A O OMBWAYO

JUDGE

