



REPUBLIC OF KENYA



**Ochomo & another v Wandera (Civil Appeal E738 of 2023)  
[2025] KEHC 7168 (KLR) (Civ) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7168 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E738 OF 2023**

**AC MRIMA, J**

**MAY 30, 2025**

**BETWEEN**

**RODGERS OMONDI OCHOMO & ANOTHER ..... APPLICANT**

**AND**

**PETER ODONGO WANDERA ..... RESPONDENT**

**RULING**

1. This ruling relates to the Appellants'/Applicants' application by way of a Notice of Motion dated 7<sup>th</sup> March 2025. The application sought to stay the execution of the judgment and decree of the trial Court which execution followed the dismissal of the appeal on 18<sup>th</sup> December 2024.
2. The Applicants did not contest the dismissal of the appeal, but the subsequent execution claiming that they had deposited the sum of Kshs.1,565,550/= in Court as security which sum was released to the Respondent a result of which rendered the subsequent further execution unlawful.
3. The application was opposed through the Respondent's Counsel Replying Affidavit wherein it was explained that the sum of Kshs. 1,565,550/= was the principal amount in the impugned judgment and that upon the dismissal of the appeal, the Respondent had the costs assessed and interest calculated and a subsequent decree issued where there was a balance of Kshs. 249,073.62 and that was the basis of the execution. A decree to that effect was annexed to the Affidavit.
4. This Court has carefully considered the application and the response. There is no doubt that the amount deposited in this Court as security was the principal amount in the judgment. That amount was less costs of the suit and interest. Upon dismissal of the appeal, the Respondent had the costs and interest assessed by the trial Court and a decree issued. According to the decree, there was a balance of Kshs. 249,073.62 after receipt of the security of Kshs. 1,565,550/=. That was the amount the



Respondent executed for. Therefore, this Court does not find any fault in the manner the Respondent dealt with the execution.

5. The Applicants deposed in the supporting affidavit that they were not averse to satisfying the amount of Kshs. 249,073.62, but needed 30 days to settle the same. However, the gist of the application pointed otherwise since the Applicants first port of call was to contest the lawfulness of the execution. The Applicants were, therefore, approbating and reprobating, an act which is legally impermissible.
6. With such a prevailing status quo, it will be remiss of this Court to stop the execution. The upshot is that the application is unmerited and is hereby dismissed with costs assessed at Kshs. 20,000/=.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY, 2025.**

**A. C. MRIMA**

**JUDGE**

