



**Berdma Security Limited & another v Onyango (Civil Suit  
E175 of 2024) [2025] KEHC 11611 (KLR) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11611 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT E175 OF 2024  
RN NYAKUNDI, J  
AUGUST 4, 2025**

**BETWEEN**

**BERDMA SECURITY LIMITED ..... 1<sup>ST</sup> APPLICANT**

**BERNARD KHAMALA MUSUNDI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JOHN WEKESA ONYANGO ..... RESPONDENT**

**RULING**

1. What is pending before this court for determination is a Notice of Motion application dated 1<sup>st</sup> July 2025 where the Applicants are seeking the following orders:
  - a. Spent
  - b. That there be a stay of execution in Eldoret Chief Magistrate Court Civil Case No. E1023 of 2021 - *John Wekesa Onyango v Berdma Security Ltd & Benard Khamala Musundi* pending the hearing and determination of this motion.
  - c. That there be a stay of execution in Eldoret Chief Magistrate Court Civil Case No. E1023 of 2021 - *John Wekesa Onyango v Berdma Security Ltd & Benard Khamala Musundi* pending the hearing and determination of this appeal.
  - d. That the costs of this application be provided for.
2. The Application is based on the grounds on the face of it among others: -
  - a. That the appellants' application for stay was considered by the court from whose decree is the subject of this appeal.
  - b. That the appellants are aggrieved by the decision of the trial court on the decision of the application for stay.



- c. That the appellants have moved this court in the exercise of its jurisdiction to exercise the liberty, on application being made, to consider such application and to make such order thereon as it may seem just on an application for stay as conferred by law.
  - d. That substantial loss shall ensue.
  - e. That the application has been made without unreasonable delay.
  - f. That the appellants are willing to provide such security as the court orders for the due performance of such decree or order as may ultimately be binding on them by way of a bank guarantee.
  - g. That sufficient cause exists to warrant the grant of the order sought.
3. The Application is supported by the annexed affidavit sworn by Benard Khamala Musundi which can be summarized as follows
- a. That the respondent impleaded the appellants vide Eldoret Chief Magistrate Court Civil Case no. E1023 of 2021 - *John Wekesa Onyango v Berdma Security Ltd & Benard Khamala Musundi* seeking for relief as follows: -
    - a. A refund of the consideration paid to the defendants for sale of shares being Sh. 800,000 (Eight Hundred Thousand) with interest at courts rate from the date it fell due till full payment of the same.
    - b. General damages for breach of contract.
    - c. Costs of the suit and interests.
  - b. That the appellants entered appearance and filed a defence.
  - c. That the matter proceeded with the parties tendering their evidence and judgment was delivered on the 20<sup>th</sup> August, 2024.
  - d. That by the judgment the court found in favor of the respondent as follows:-
    - a. An order of specific performance was issued directing the 2<sup>nd</sup> defendant to perform his part of the contract within the next 30 days from the date of judgment and in default to refund the sum of Sh.800,000 (Eight Hundred Thousand) with interest thereon at court rates from 18<sup>th</sup> March,2020.
    - b. An award of nominal damages of Sh. 200,000 (Two Hundred Thousand) for breach of contract with interest at court rates from the date of the judgment until payment in full.
    - c. Costs of the suit awarded to the plaintiff.
  - e. That the appellants being aggrieved filed this appeal and proceeded to apply for a stay of execution of the Magistrate Court judgment.
  - f. That the court delivered ruling on the application for stay of execution pending appeal on the 28<sup>th</sup> May, 2025.
  - g. That the appellants are aggrieved by the decision of the trial court on the decision of the application for stay.



- h. That the appellants have moved this court in the exercise of its jurisdiction to exercise the liberty, on application being made, to consider such application and to make such order thereon as may to it seem just on an application for stay as conferred by law.
- i. That substantial loss shall ensue as the impugned decree involves an order for specific performance that if executed it will result in a change of the 1<sup>st</sup> defendant's shareholding and payment of money that the ability the respondent in the event the decree is reversed will not be recovered as the means of the respondent are unknown.
- j. That the application has been made without unreasonable delay.
- k. That the appellants are willing to provide such security as the court orders for the due performance of such decree or order as may ultimately be binding on them by way of a bank guarantee.
- l. That sufficient cause exists to warrant the grant of the order sought as the appellants impugn the finding of the trial court for the reasons inter-alia: -
  - a. The Learned Magistrate erred in law and fact in decreeing an order for specific performance that was not expressly pleaded hence the court was bereft of jurisdiction to grant it.
  - b. The Learned Magistrate erred in law and fact in awarding general damages in an action for breach of contract christened as nominal damages contrary to the laid down tenets of the law.
  - c. The Learned Magistrate erred in law and fact in failing to address the jurisdiction of the Court to deal with the suit based on section 3 (1) of the [Companies Act](#), Cap. 486 which provides that "the Court" means (unless some other court is specified) the High Court and in this case no other Court had been specified to deal with the matter of share purchase and transfer agreement.
  - d. The Learned Magistrate erred in law and fact in failing to find that no culpability existed on the part of the 1st appellant by dint of the doctrine of privity of contract.
  - e. The Learned Magistrate erred in law and fact in failing to find that the respondent was in breach of contract by failing to comply with the provisions of the [Private Security Regulation Act](#), Cap. 207 and the shares could not be transferred to him without legal compliance as it would lead to the revocation of the license of the 1<sup>st</sup> appellant.
  - f. The learned Magistrate erred in law and fact in failing to find that the transaction between the parties could not be enforced for failure to comply with requirements of share transfer notice and the [Companies Act](#) Cap 486.
- m. That the appellants pray that this application be allowed
- n. That the appellants pray for an ex-tempore stay order to issue as the respondent has commenced execution by proclaiming the Appellants property based on the proclamation by Chartless Auctioneers dated the 9<sup>th</sup> of June 2025 as the same may be carted away at any time rendering this motion to be academic. Annexed hereto is the proclamation marked as 1
- o. That I do make this oath conscientiously believing the afore-deponed particulars to be true to the best of my knowledge and belief.



- p. This case by dint of the letter dated 14<sup>th</sup> July 2025 was placed before me for directions by the Deputy Registrar of the High Court. On receipt of the letter the matter was set down for a status conference on 27<sup>th</sup> July 2025 and pursuant to that the order herein under carried the day.

**Decision**

4. In view of the status conference held on 29<sup>th</sup> of July 2025 in the presence of learned counsel Mr. Mogambi directions are hereby given that the date of 23<sup>rd</sup> October 2025 issued by Court No. 3 presided over by Ominde J be retained as the legitimate case docket management.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT AT ELDORET THIS 4<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**

**JUDGE**

M/s Wambua Kigamwa & Co Advocates

