



**Onsare v Kisilu & another (Environmental and Land Originating Summons
457 of 2017) [2024] KEELC 6461 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6461 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 457 OF 2017**

AK BOR, J

OCTOBER 3, 2024

BETWEEN

WILLIAM ISABOKE ONSARE PLAINTIFF

AND

BENJAMIN KAKUTI KISILU 1ST DEFENDANT

MARY WAMBUI NDUNGU 2ND DEFENDANT

RULING

1. William Isaboke Onsare filed the application dated 02/01/2024 seeking to have this court extend the orders issued in the ruling of Mr. Justice Angima awaiting the hearing of Civil Appeal No. 33 of 2021 at the Court of Appeal in Nakuru. He also sought to have the eviction proceedings stayed.
2. Mr. Onsare swore the affidavit in support of the application and averred that after the judgment was delivered on 22/10/2019, he lodged an appeal in the Nakuru Court of Appeal. He filed an application dated 13/12/2019 which was allowed on 04/02/2021 vide which the court stayed execution of the decree for a period of 2 years from the date of the ruling or until determination of the intended appeal, whichever came first. The court directed the Applicant to file his substantial appeal within 90 days in default of which the stay granted would lapse. He stated that he had filed his appeal and that the Respondent had applied to evict him from the suit land.
3. Mary Wambui Ndung'u swore the replying affidavit in opposition to that application and averred that the application did not meet the settled principles for grant of the orders sought and therefore it ought to be dismissed with costs. She adverted to the tenor of the ruling delivered on 04/02/2021 and stated that that period of 2 years had lapsed and through the application dated 15/01/2024 she sought to evict the 1st Plaintiff from the suit land. She urged the court not to allow the application.



4. The issue for determination is whether the court should extend the orders of stay of execution that were issued by this court on 04/02/2021. The applicant stated that he had filed his appeal but did not indicate whether the appeal had been fixed for hearing or the stage it had reached.
5. The court has considered the application dated 2/1/2024 together with the response of Mary Wambui Ndungu and grants the Plaintiff stay for 45 days to enable him seek stay pending determination of his appeal from the Court of Appeal which is now seized of the matter.

Each party will bear its costs.

DELIVERED VIRTUALLY AT NYAHURURU THIS 3RD DAY OF OCTOBER 2024.

K. BOR

JUDGE

In the presence of:

Mr. William Isaboke Onsare- Plaintiff

Mr. Nderitu Komu for the 2nd Defendant

Court Assistant- Vanessa Muiruri

