

KENYA / JUDGMENT

# Okello & 6 others v Letting alias Kokwas & another [2026] KEELC 5427 (KLR)

**[2026] KEELC 5427 (KLR)**

## COURT

Environment and Land Court

## BEFORE

EM Washe

## CASE / FILE NUMBER

Environment and Land Case 136 of 2015

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Okello & 6 others v Letting alias Kokwas & another (Environment and Land Case 136 of 2015)  
[2026] KEELC 5427 (KLR) (16 September 2026) (Ruling) Neutral citation:

[2026] KEELC 5427 (KLR) Republic of Kenya In the Environment and Land Court at Eldoret  
Environment and Land Case 136 of 2015 EM Washe, J September 16, 2026 Between Boaz  
Okello 1 st Plaintiff Jairo Omwoy 2 nd Plaintiff Duke Nyabuti 3 rd Plaintiff Stephen Ombati  
4 th Plaintiff James Nyangau 5 th Plaintiff Nicholas Libera 6 th Plaintiff Peter Ndung'u  
(Suing as the Administrator of the Estate of Samwel Ndungu Mucheru) 7 th Plaintiff and  
David Kimeli Letting alias Kokwas 1 st Defendant Equity Bank Limited 2 nd Defendant

## Ruling

1. The 1 st Defendant (hereinafter referred to as “the Applicant”) did file a Notice of Motion dated 20.02.2026 seeking the following Orders against the 1 st to 7 th Plaintiffs (hereinafter referred to as “the 1 st to 7 th Respondents”); - a. That the honourable court do declare that the order issued on 04.12.2015 has lapsed by operation of the law. b. That costs of the application be borne by the plaintiffs. 2. The facts in support of the prayers sought hereinabove were outlined in the body of the present Application as well as the Supporting Affidavit attached therein and can be summarized as follows; - i. The Court herein did issue an Order on the 04.12.2015 directing that the Status Quo existing at the material time be maintained pending the hearing and determination of the main suit herein. ii. Based on the provisions of Order 40 Rule 6 of the Civil Procedure Rules, the Order issued on the 04.12.2015 would only be valid for a period of twelve months thereof and thereafter, it would be extended by an Order of the Court. iii. Unfortunately, the 1 st to 7 th Respondents did not seek an extension of the Order issued on the 04.12.2015 on or before the 04.12.2016 and therefore the said Order did lapse by effluxion of time. iv. In essence, the Applicant did pray that the Orders sought in the present Application be granted and the 1 st to 7 th Respondents be condemned to pay costs thereof. 3. The present Application was indeed served on the 1 st

to 7 th Respondents as well as the 2 nd Defendant/Respondent herein. 4. The 1 st to 7 th Respondents did oppose the present Application by way of a Replying Affidavit dated 15.06.2026. 5. The 1 st to 7 th Respondents did plead the following facts in response to the present Application; - i. The 1 st to 7 th Respondents herein did plead that the Order issued on the 06.12.2015 was still alive and binding against the Applicant herein as the same had never been discharged. ii. The 1 st to 7 th Respondents further state that on the 03.08.2020, the Court in recognition of the validity of the Order issued on the 06.12.2015 did reiterate that the 1 st Defendant ensures compliance of the same pending the hearing and determination of the main suit herein. iii. The 1 st to 7 th Respondents did plead that the present Application was filed in bad faith as a cover up of the Applicant's unlawful acts of demolishing their structures on the suit property before the hearing and determination of the main suit was concluded. iv. The 1 st to 7 th Respondents therefore did seek that the Court dismisses the Applicant's Application with costs awarded to them. 6. The 2 nd Defendant (hereinafter referred to as "the 8 th Respondent") did respond to the present Application through a Replying Affidavit dated 05.06.2026. 7. In the Replying Affidavit dated 05.06.2026, the 8 th Respondent did plead the following facts in support of the present Application; - i. The 8 th Respondent did admit that indeed, the Court did issue an Order on the 06.12.2015. ii. However, the 1 st to 7 th Respondents did not extend the same prior to the lapse of 1 year as envisaged by the provisions of Order 40 Rule 6 of the Civil Procedure Rules, 2010. iii. The 8 th Respondent did plead that the 1 st to 7 th Respondents were not serious with the quick determination of this suit as they had been filing numerous interlocutory applications that hinder the hearing of the main suit. iv. In conclusion, the 8 th Respondent did seek that the Court allows the present Application with costs. 8. The 1 st to 7 th Replying Affidavit as well as the 8 th Respondent's Replying Affidavits were duly served on the Applicant herein but there was no Further and/or Supplementary Affidavit that was filed by the Applicant in response to the same. 9. The Court did direct that the present application would be canvassed by way of written submissions. 10. Based on the above directions, the Applicant did file his submissions dated 10.06.2026 in support of the present Application while the 1 st to 7 th Respondents did file their submissions dated 13.07.2026 in opposition of the present Application. 11. Indeed, the Court has carefully perused the present Application, the responses by the 1 st to 7 th Respondents as well as the 8 th Respondents including the submissions in support and against the prayers sought and identifies the following issues for determination; - Issue No. 1- Is the order issued on the 06.12.2015 valid and binding on the parties herein or not? Issue No.2 - Is the order sought in the present application merited or not? Issue No. 3 - Who shall bear the costs of the present application? 12. The above issues will now be discussed as provided hereinbelow. Issue No. 1- Is the order issued on the 06.12.2015 valid and binding on the parties herein or not? 13. The first issue for determination is whether the Order issued on the 04.012.2015 is still valid and binding on the parties herein or not. 14. The Applicant herein did plead and submit that the Order issued on the 04.12.2015 was subject to the provisions of Order 40 Rule 6 of the Civil Procedure Rules, 2010. 15. The Applicant did further plead and submit that under Order 40 Rule 6 of the Civil Procedure Rules, 2010, an Interlocutory Order can only subsist for a

period of not more than One Year from the time it was issued unless extended with leave of the Court. 16. The Applicant therefore was of the considered view that the Order issued on the 04.12.2015 had since lapsed on the 04.12.2016 by effluxion of time. 17. In addition to the foregoing, the 1 st to 7 th Respondents have never sought leave to extend the Order issued on the 04.12.2015. 18. In essence, the Applicant did submit that the Order issued on the 04.12.2015 was no longer valid and/or binding on the parties herein. 19. The 1 st to 7 th Respondents on the other hand were of the view that the Order issued on the 04.12.2015 was valid and binding on the parties herein. 20. The 1 st to 7 th Respondents did plead and submit that the Order issued on the 04.12.2015 was to subsist during the hearing and determination of the main suit. 21. In view of the fact that the main suit in this proceeding has not been determined, then the Orders of 04.12.2015 are still valid and binding on the parties herein. 22. The 8 th Respondent did support the present Application as well as the submissions filed by the Applicant. 23. Based on the above pleadings by all the parties, it is not in dispute that an Order was made on the 04.12.2015 directing parties to maintain the Status Quo that was subsisting at that time until this suit had been heard and determined. 24. It is not also in dispute that the Order issued on the 04.12.2015 was an interlocutory order granted under the provisions of Order 40 Rule 1 and/or 2 of the Civil Procedure Rules, 2010. 25. The provisions of Order 40 Rule 6 of the Civil Procedure Rules, 2010 states as follows; - “Where a suit in respect of which an interlocutory injunction has been granted is not determined within the period of twelve months from the date of the grant, the injunction shall lapse unless for sufficient reason the Court orders otherwise” 26. Clearly therefore, if a party is granted an Interlocutory Order pending the hearing and determination of the main suit, there is a presumption by the law that such a litigation must be completed at least within twelve months from the date of issuance of the Interlocutory Order. 27. If the litigation is not completed within a period of twelve months from the date of issuance of the Interlocutory Order, the Court retains the discretion of extending the same periodically until otherwise ordered. 28. The significance of the period provided under Order 40 Rule 6 of the Civil Procedure Rules, 2010 was to prohibit the use of an Interlocutory Injunction or Order as a Permanent Injunction by litigants who are not willing to expeditiously litigate the matters after issuance of the Interlocutory Order. 29. The proceedings in this file confirm that an Interlocutory Order was issued on the 04.12.2015 in favour of the 1 st to 7 th Respondents against the Applicant and the 8 th Respondent herein. 30. However, the 1 st to 7 th Respondents herein have not demonstrated to this Court that the Interlocutory Order issued on the 04.12.2015 was extended with leave of the Court either before or on the lapse of the twelve months’ period which ended on the 04.12.2016. 31. In such a scenario, the Order issued on the 04.12.2015 did lapse by effluxion of time on the 04.12.2016. 32. In essence, this Court is of the considered view and finding that although the main suit is yet to be heard and determined, the 1 st to 7 th Respondents’ Interlocutory Orders issued on the 04.12.2015 no longer exist and are not binding on the parties herein unless fresh orders are granted by the Court upon a fresh application. Issue No.2 – Is the order sought in the present application merited or not? 33. The second issue for determination is whether the present Application is merited or not. 34. According to the finding in Issue No.1, this Court is of the

considered finding that the present Application is merited and a declaration that the Order issued on the 04.12.2015 has lapsed by effluxion of time should be granted. Issue No. 3 – Who shall bear the costs of the present application? 35. On costs, the same usually follow the event. 36. However, in view of the fact that the main litigation is still ongoing and the present application was purely to establish the legal status of the Interlocutory Order issued on the 04.12.2015, this Court hereby makes a finding that the costs of the present Application will abide the outcome of the main suit.

## Conclusion

37. In conclusion, this Court hereby makes the following Orders in determination of the present Application; - a. The notice of motion application dated 20.02.2026 be and is hereby allowed. b. The interlocutory order issued on the 04.12.2015 be and is hereby declared lapsed by effluxion of time and not binding on the parties herein anymore. c. The costs of the notice of motion dated 20.02.2026 will abide the outcome of the main suit. DATED, SIGNED AND DELIVERED AT ELDORET THIS ON THIS 16 TH DAY OF SEPTEMBER, 2026. EMMANUEL.M. WASHE JUDGE In the presence of: Court Assistant: Brian Advocate for 1 st to 7 th Applicants: Mr. Mwaniki - No appearance Advocate for 1 st Respondent: Mr. Momanyi Advocate for 2 nd Respondent: Mr. Were – No appearance

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