



**Mwinzi & another v Kimanzi & 4 others (Civil Suit E12 of 2021)  
[2024] KEHC 15956 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15956 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT E12 OF 2021  
HI ONG'UDI, J  
DECEMBER 18, 2024**

**BETWEEN**

**CAROLINE MUTWA MWENDE MWINZI ..... 1<sup>ST</sup> APPLICANT**

**KASYETHAU NOBLE TRADING LIMITED ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GEORGE NGUI KIMANZI ..... 1<sup>ST</sup> RESPONDENT**

**ANNAH MWALE KIMANZI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**THE REGISTRAR OF COMPANIES ..... 1<sup>ST</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**FRANCIS GATHENYA GATHUKU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 19<sup>th</sup> December 2023 the Applicants pray for the following orders;
  - i. -
  - ii Spent.
  - iii Pending hearing and determination of this Application and the main suit, this court be pleased to Order stay of Proceedings in Nakuru CM ELC E004 of 2022 Kayethau Noble Trading. Ltd Vs Caroline Mutwa Mwendu Mwinzi.
  - iv George Ngui Kimanzi] & Annah Mwaleh Kimanzi be condemned to pay costs of this Application.



- v The main suit herein be fixed for hearing on priority.
2. The said application is based on the grounds on its face and the affidavit of the 1<sup>st</sup> plaintiff/applicant sworn on even date. She deponed that this suit was filed on 4<sup>th</sup> May, 2021 and to date the 1<sup>st</sup> and 2<sup>nd</sup> respondents have never filed a defence. Further, that on 4<sup>th</sup> June, 2021, the trial court issued temporary interim orders requiring rental proceeds from Apartment No. T6 be deposited in court. That since then, the matter has substantially proceeded with latest orders being issued on 2<sup>nd</sup> November, 2023.
  3. She further deponed that despite that Ruling being in place, the said respondents had filed Nakuru Chief Magistrate’s ELC E004/2022 Kasyethau Noble Trading Limited v Caroline Mutwa Mwendu Mwinzi seeking rental proceeds of apartment number Nakuru Municipality Block 20/285/U8 and T6. In the alternative, to have her evicted from House No. U2.
  4. She deponed that in a Ruling dated 2<sup>nd</sup> October, 2023, the trial court substantively pronounced itself that the application for stay of proceedings ought to be made before this Court, hence the instant application. Further, that there was a risk of conflicting orders being issued in the event the two cases run concurrently.
  5. The applicants filed a supplementary affidavit dated 20<sup>th</sup> December 2023 in which they annexed copies of the Rulings delivered on 2<sup>nd</sup> November 2023 and 16<sup>th</sup> December 2021.
  6. This application was canvassed by way of written submissions. The respondents did not file any response to the application or submissions on the same.
  7. The applicants’ submissions were filed by Sabaya & Associates Advocates and are dated 25<sup>th</sup> September 2024. Counsel identified three issues for determination.
  8. The first issue is whether the applicant has met the threshold for grant of stay of proceedings. Counsel submitted that the court needed to determine who were the bonafide directors/shareholders of Kasyethau Noble Trading Limited and until then no one was allowed to transact in the name of the said company.
  9. The second issue is whether the notice of motion dated 19<sup>th</sup> December, 2023 is res judicata. Counsel submitted in the negative and cited the decision in Malindi Land Case No. 56 of 2020 Ngala & 2 Others v Randu & 2 Others [2023] KEELC 19334 (KLR) (29 August 2023) where it was held as follows:
    - “ 14. The test in determining whether a matter is res judicata was summarized in the Bernard Mugo Ndegwa v James Nderitu Gichae and 2 others [2010] eKLR as follows:
      - a) The matter in issue is identical in both suits;
      - b) The parties in the suit are the same,
      - c) Sameness of the title/claim;
      - d) Concurrence of jurisdiction; and
      - e) Finality of the previous decision.”
  10. Lastly, on whether the prayers sought in notice of motion dated 19<sup>th</sup> December 2023 are merited, counsel submitted in the affirmative and urged the court to allow the said application as prayed.



## Analysis and determination

11. I have carefully considered the application which is the subject of this ruling and the submissions made on behalf of the plaintiffs/applicants. I find the only issue for determination to be whether this Court should grant stay of proceedings in Nakuru Chief Magistrate's ELC E004 of 2022 Kayethau Noble Trading. Ltd Vs Caroline Mutwa Mwendu Mwinzi pending hearing and determination of this suit.
12. This court has powers to stay proceedings under its inherent jurisdiction reserved in section 3A of the [Civil Procedure Act](#) which provides as follows: -

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
13. The court in Kenya Wildlife Services vs. James Mutembei [2019] eKLR cited with approval the case of Re Global Tours & Travel Ltd HCWC No. 43 of 2000 where Ringera, J (as he then was) held that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice...the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matter, it should bear in mind such factors as the need for expeditious disposal of case.....and whether the application has been brought expeditiously.”
14. In the case of Kenya Wildlife Services (supra) the court held that:

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”
15. The same court further quoted Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”.



16. In the instant case, the plaintiff/applicants contend that having the two court cases running parallel to each other would lead to conflicting orders resulting in endless chaos. They further contend that the court needed to determine who were the bonafide directors/shareholders of Kasyethau Noble Trading Limited and until that is done no one should be allowed to transact in the name of the company.
17. The rule is more exacting for a party requesting for a stay of proceedings. In particular, an applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded.
18. Having looked at the prayers sought in suit before the lower court the lower court, I note that the plaintiff therein seeks among other orders for payment of Ksh. 60,000/= per month from 2021, this being the loss of monthly earnings for the plaintiff's premises known as Nakuru Municipality Block 20/285 (T.6). Further, that the defendant (the 1<sup>st</sup> applicant herein) be ordered to unlock the said premise and a permanent injunction be issued to the defendant (the applicant herein) or her agents from interfering with the plaintiff's premises.
19. In my humble view, the prayers sought in the present suit have no relationship whatsoever with the prayers sought in the lower court suit. The said prayers challenge resolutions of the company's (2<sup>nd</sup> plaintiff /applicant) general meetings and forfeiture of the 400 shares belonging to the 1<sup>st</sup> plaintiff/ applicant among other reliefs. This in my view could still be challenged in the lower court suit as the 1<sup>st</sup> plaintiff/applicant would have an opportunity to respond to the plaintiff's case.
20. In view of the forgoing, I find that the applicants have not demonstrated any exceptional circumstances to warrant this court staying proceedings in Nakuru Chief Magistrate's ELC E004 of 2022 Kayethau Noble Trading. Ltd Vs Caroline Mutwa Mwendu Mwinzi.
21. Consequently, the application dated 19<sup>th</sup> December 2023 lacks merit and is hereby dismissed. Costs in the cause.
22. Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 18<sup>TH</sup> DAY OF DECEMBER, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

