



**Gikundi (Suing in his Capacity as the Legal Representative to the Estate of Kathuku M'anampiu – Deceased) v M'mugambi (Environment & Land Case E001 of 2023) [2023] KEELC 16886 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16886 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E001 OF 2023  
CK NZILI, J  
APRIL 19, 2023**

**BETWEEN**

**JAMES GIKUNDI (SUING IN HIS CAPACITY AS THE LEGAL REPRESENTATIVE TO THE ESTATE OF KATHUKU M'ANAMPIU – DECEASED) ..... APPLICANT**

**AND**

**FRANCIS K. IGWETA M'MUGAMBI ..... DEFENDANT**

**RULING**

1. The court is asked to stay the proceedings in Meru CMCC ELC No. E2 of 2021 where the applicant is the 1<sup>st</sup> defendant and the respondent herein the plaintiff, pending the hearing and determination of this suit. The grounds for the application are contained on its face and the supporting affidavit sworn by James Gikundi Muriungi on 23.1.2023. The applicant contends that he has lived on the suit land for over 50 years alongside his late mother, yet the respondent is seeking to evict him therefrom despite the pendency of this suit.
2. In the supporting affidavit, the applicant has attached a copy of the grant ad litem, copies of the certificate of title, a copy of the green card, a ruling in Meru SPMC No. 256 of 1985, a copy of a letter from the Deputy Registrar regarding Meru HCSC 7 of 2002, regarding a ruling following his objection and pleadings in the lower court suit all marked as annexure numbers JG1-6 respectively. The notice of motion is opposed through a replying affidavit sworn by Francis K.M Igweta, the respondent on 20.2.2023 on the basis that the application is an afterthought, a delaying tactic which was filed late close to 3 years after the suit was filed. Further, the respondent averred that he has been litigating on the suit land since 1979, he is both old and sickly and if the suit is stayed it would amount to an injustice since the applicant had all the opportunity to amend the defence and include a counterclaim at the lower court instead of rushing to this court.



3. To stay or not stay court proceedings is at the discretion of the court, which is to be exercised judiciously based on sound reasons since it borders on the infringement of a party's constitutionally guaranteed rights to be heard, access to justice and fair hearing. Further, the court under Article 159 of *the Constitution* as read together with Sections 1A, 1B and 3A of the *Civil Procedure Act* is obligated to abide by the overriding objective of expeditious, proportional, fair and just disposal of disputes.
4. In *Ezekiel Mule Musembi vs H.Young and Co. (E.A) Ltd* (2019) eKLR the court cited with approval *Re-Global Tours and Travel Ltd Nairobi Winding Up Case No. 43 of 2000*, in which it was held that the sole question on an application for stay of proceedings is whether it is in the interest of justice to order for it, bearing in mind the expeditious disposal of the case, the prima facie merits of the intended appeal, the scarce and optimum utilization of judicial time and whether the application is brought expeditiously.
5. Further in the case of *Christopher Ndolo Mutuku vs CFC Stanbic Bank Ltd* (2015) eKLR, the court said that what matters in an application for stay of proceedings is the overall impression the court makes out of the total sum of the circumstances of each case, being aware that an appellant has an unfettered right of appeal while balancing it with the right of the plaintiff to equal treatment before the law so that his case is heard without an unreasonable delay, which rights should not be hindered without just and sufficient cause.
6. In the case of *KWS vs James Mutembei* (2019) eKLR, the court held that stay of proceedings was a grave judicial action that interferes with the right to the expeditious conduct of litigation and infringes on the right to access justice, the right to be heard without delay and the right to a fair trial, thus the test should be both high and stringent.
7. Applying the foregoing case law and principles, the suit sought to be stayed was filed on 29.10.2020 while the defence by the applicant herein was filed on 7.1.2021. The sole complaint raised by the applicant in his joint defence is that the suit is s both sub-judice and res-judicata in view of Meru CMCC No.183/2007.
8. The applicant filed the suit before this court on 23.1.2023, in which he has attached a copy of a limited grant ad litem issued on 1.9.2020.
9. The respondent has termed the application herein as an afterthought, a delaying tactic and an abuse of the court process which was filed almost three years down the line. In opposition to the originating summons, the respondent has attached several decisions showing the history of the dispute among them Meru SRMCC No. 1 of 1980, Meru HCCA 28 of 1993, Meru SRM CC 256 of 1985, Meru Chief Magistrates CR. Case No. 570 of 2006 on Forcible detainer and malicious damage, Meru High Court Succession Cause No. 70 of 2002, Meru High Court Misc. Application No. 57 of 2019 and lastly, Meru CMCC No. 183 of 2007. In all these previous cases decisions and orders were made against the applicant's deceased mother, some of which were on eviction, forceable detainer and malicious damage.
10. Looking at the foregoing history of the dispute, the applicant has not told this court why he took three years to file the present application for a stay of proceedings. Secondly the issue over the ownership of the suit land has been determined by previous facts and adverse orders including those of eviction and forcible detainer made. The applicant also urged the court to find that if the lower court suit proceeds for hearing, he shall stand prejudiced.
11. This court has to balance the interests of the applicant against those of the respondents in determining whether to stay the lower court proceedings given the applicant has an undoubted right to the expeditious disposal of suit, the rights to access justice and fair hearing. The applicant has said that he



has been on the suit land for 50 years. It is not explained why he chose to await until the last minute to apply for a stay of the suit yet an order for eviction was first made on 31.1.1980 in Meru SRMCC NO. 1 of 1980.

12. Similarly, in Meru H.CA No. 28 of 1993, the respondent's appeal against the applicant's late mother was allowed regarding the mother title LR No.Ntima/Igoki/300 over the alleged half-share of the land. The applicant has not applied for the transfer or consolidation of any of the suit(s) if at all the suits are related.
13. Given the foregoing reasons my finding is that it would not be in the interest of justice to stay the suit. The upshot is that the application dated 23.1.2023, lacks merits and is hereby dismissed with costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 19<sup>TH</sup> DAY OF APRIL, 2023**

**In presence of:**

C/A: John Paul

Miriti for Applicant

Obiria for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

