



**Muriira v Ntarangwi (Environment and Land Appeal E004 of 2023)
[2023] KEELC 16954 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16954 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E004 OF 2023**

CK NZILI, J

APRIL 19, 2023

BETWEEN

CHRISTOPHER MURIIRA APPELLANT

AND

JASON MUTHEE NTARANGWI RESPONDENT

RULING

1. The court by an application dated January 23, 2023 is asked to stay proceedings in Tigania Magistrates Court ELC Case No E016 of 2021 pending the hearing of this appeal. The reasons are contained on the face of the application and in the supporting affidavit by Christopher Muriira sworn on January 23, 2023 namely: the appeal would be rendered nugatory should the matter at the lower court proceed during the pendency of the appeal.
2. The application is opposed through an affidavit sworn by Jason Muthee Ntarangwi. The reasons are that the suit in the lower court relates to a boundary fixing over two distinct parcels of land, in which the trial court ordered by consent of the parties, for the county surveyor Meru North to visit the locus in quo, fix the beacons and establish the official boundary. That thereafter, the fence was fixed to avoid further interference, which prompted the filing of an application for contempt, which the trial court handled and gave fair directions. That to stay the proceedings would be unfair, unnecessary and shall amount to blocking the administration of justice since the directions given together with the ruling appealed against were in favour of the appellant who in the first place filed the appeal and thereafter filed a counterclaim.
3. In *KWS v Mutembei* (2019) eKLR, the court cited with approval Re-Global Tours & Travel Ltd, Nairobi HC winding up case No 43 of 2000 where it was held that the stay of proceedings was a discretionary relief which is to be exercised in the interest of justice by weighing the pros and cons of granting or not granting the orders, bearing in mind the need for the expeditious disposal of cases, the prima facie merits of the intended appeal, the scarcity and the optimum utilization of judicial time and



lastly, whether the application has been brought expeditiously. The court went on to state that such an order if granted impinges on and seriously interferes with the right of a litigant to access justice and for a fair trial.

4. In this application, the ruling appealed against was made on October 1, 2022. Parties were ordered to comply with Order 11 of the Civil Procedure Rules. The appeal was filed on January 19, 2023 with no leave of the court. The order to attend the locus in quo and fix the boundary was by consent of parties made on March 4, 2022. It has not been appealed against. Thereafter, parties were directed to comply with Order 11 of the *Civil Procedure Rules*.
5. The applicant has not demonstrated how he would be prejudiced if the matter was to proceed for hearing since the orders of October 1, 2022 were partially in his favour and the trial court left an option for the applicant to file a claim for loss of the alleged destroyed property.
6. Due to the foregoing reasons, I do find that it would not be in the interest of justice to forestall the impending hearing at the lower court. The appeal as it stands was filed out of time and without leave of the court. Therefore the application is hereby dismissed with costs for lack of merits.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 19TH DAY OF APRIL, 2023

In presence of:

C/A: John Paul

Miss Kinyua for Mwiti for appellant

Gikunda Anampiu for respondent

HON. C.K. NZILI

ELC JUDGE

