



Mavani & 4 others (Sued as Officials and Residents of the Dik Dik Residents Association) v Sultan Palace Development Limited & 9 others; National Environment Management Authority & 2 others (Interested Parties) (Environment & Land Case 317 & 320 of 2018 (Consolidated)) [2023] KEELC 21839 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21839 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 317 & 320 OF 2018 (CONSOLIDATED)**

**JA MOGENI, J
NOVEMBER 30, 2023**

BETWEEN

**DIPENKUMAR MAVANI 1ST PLAINTIFF
JOE MUIGAI 2ND PLAINTIFF
MEHWOOD REMAT KHAN 3RD PLAINTIFF
ADAN KANCHORO MULATA 4TH PLAINTIFF
ELIZABETH WAZANI WACHIRA 5TH PLAINTIFF
SUED AS OFFICIALS AND RESIDENTS OF THE DIK DIK RESIDENTS
ASSOCIATION**

AND

**SULTAN PALACE DEVELOPMENT LIMITED 1ST DEFENDANT
CHINA JIANGXI INTERNATIONAL KENYA LIMITED 2ND DEFENDANT
CABINET SECRETARY FOR ENVIRONMENT AND NATURAL
RESOURCES 3RD DEFENDANT
WATER RESOURCES MANAGEMENT AUTHORITY 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY INTERESTED
PARTY
NAIROBI CITY COUNCIL INTERESTED PARTY
NATIONAL LAND COMMISSION INTERESTED PARTY**



**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 320 OF 2018**

BETWEEN

SULTAN PALACE DEVELOPMENT LIMITED PLAINTIFF

AND

DIPENKUMAR MAVANI 1ST DEFENDANT

ELIZABETH WAZANI WACHIRA 2ND DEFENDANT

JOE MUIGAI 3RD DEFENDANT

MEHWOOD REMAT KHAN 4TH DEFENDANT

ADAN KANCHORO MULATA 5TH DEFENDANT

**SUED AS OFFICIALS AND RESIDENTS OF THE DIK DIK RESIDENTS
ASSOCIATION**

RULING

1. The 1st defendant moved the Court through the Notice of Motion dated the 23/02/2023, seeking for stay of proceedings pending the hearing and determination of Nairobi Civil Appeal No. E392 of 2022 arising out of the Environment and Land Court ruling on 2/03/2022 in Petition E017 of 2021 involving the plaintiff in ELC 320 of 2018, 1st Defendant in the consolidated suit and the 4th Defendant. The application is premised on the seven (7) grounds on its face and is supported by the affidavits sworn by Leo Qin, the General Manager of Sultan Palace Development the applicant sworn on 23/01/2023.
2. I have searched the court records and noted that the application is not opposed at all. There is no replying affidavits sworn and filed in court.
3. That pursuant to the directions given on the 2/10/2023 the Counsel for the 3rd defendant stated that they would not participate in the application.
4. The following are the issues for the Court's determinations;
 - a. Whether the Defendant has made a reasonable case for staying these proceedings.
 - b. Who pays the costs?
5. Court has considered the grounds on the Notice of Motion and the supporting affidavit and other documents on record, filed by the applicant and come to the following determinations;
 - a. That this proceeding was commenced through the Plaint which was amended on 4/06/2019 by Diki Dik Gardens Residents' Association alleging that suit property LR 209/11609/2-6 and LR 209/11609/9-17 are situated on riparian reserves and/or wetlands. The Plaintiff seeks to have the question about whether the suit property is a wetland determined in this suit since it is central to the ownership of the suit property. That from the affidavit evidence availed, the Plaintiff herein had earlier moved the ELC Court in ELC Petition No. E017 of 2021 through



an application dated 2/03/2022 3rd April, seeking conservatory orders but the court declined paving way for WARMA to gazette, demarcate, and fence off the suit properties.

- b. That the applicant herein lodged an appeal, on the Petition following the ruling the appeal is referenced as Nairobi Civil Appeal No. E392 of 2022. That the Applicant has annexed to their supporting affidavit and a copy of the Stay Order issued on 26/07/2022 by the Court of Appeal pending the hearing and determination of the Appeal filed by the Applicant. The essence of the Order issued by the court of appeal was to stay any development and or processes on the suit premises by the parties to the suit until the hearing and determination of the appeal.
 - c. That as there is no doubt that the applicant herein who is the 1st defendant in the consolidated suit has filed an appeal against the decision of the ELC Petition E017 of 2021 and has obtained stay orders, yet the same party is the Appellant in the Appeal and the key issue for determination is whether the suit properties constitute wetlands. I hold the view that proceeding with the hearing of ELC Case No. 317 of 2018 which involves same parties, same suit property and same central issue will not be possible. In any case the Court of Appeal is seized of the same central issue at appeal the parties and prayers in the matter before the ELC court are more or less the same, then the failure to stay the proceedings of this suit will contravene Section 6 of the Civil Procedure Act Chapter 21 of Laws of Kenya and so I will move to stay proceedings in the suit before the court pending the hearing and determination of the pending appeal in the Court of Appeal on the orders issued on the 26/07/2022 by the Court of Appeal.
 - d. Section 6 of the Civil Procedure Act Cap 21, provides that ‘no court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of the claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed’. (emphasis mine)
 - e. My understanding of the issues in ELC 317 of 2018 is that they are the same issues that were litigated in ELC Petition E017 of 2021 from which the Appeal lies. This being the case and despite the court having stayed Petition E017 of 2021 I look away from the fact that the 1st defendant who is the appellant obtained a stay from the Court of Appeal on 26/07/2022 with regard to the decision arrived at in that Petition in which a ruling was delivered on 2/03/2022.
 - f. This section is a bar to prosecution of parallel matters in courts of similar jurisdiction. The Applicant herein has not demonstrated by attaching copies of the petition, the court ruling by my sister Justice Lucy Mbugua, the Stay issued by the Court of Appeal among other documents which show that the suit property is the same and the parties are the same. These documents have enabled this court to make an analysis as to the dispute and or contention and the prayers sought therein and noted the similarity and of all issues and parties.
6. Justice Gikonyo in the case of Kenya Wildlife Service versus James Mutembei [2019] eKLR, observed that ‘stay of proceedings is a grave judicial action which 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 proceedings is high and stringent.
 7. Given the scrutiny of the information at hand and the fact that this suit has been consolidated with ELC E258/22 which is closely linked with ELC Petition E017/2021 which this court had recommended to be stayed and to have ELC 317 of 2018 to be the lead file by virtue of its age, I am persuaded that the



proceedings in ELC 317 of 2018 should be stayed until the Court of Appeal pronounces itself on the matters before it emanating from ELC Petition E017 of 2021.

8. There is a lesson in all these – and that is the fact that litigants are busy in forum shopping which is a terrible practice. The parties in the three suits mentioned here should not have allowed themselves to file a plethora of court cases which in the end affect the process of efficient, effective and timely resolution of cases. The suit is delayed because of the unprofessional approach to litigation of treating legal suits like “soko ni ya jioni” which is a term used in disposing of goods in open market late in the evening to secure buyers at the lowest price. Shame on lawyers and litigants who engage in these shameful acts leading to unnecessary delays of disposing court matters.

Costs

9. That though the applicant is successful in the application and would ordinarily have been entitled to costs under Section 27 of the Civil Procedure Act, the Court is of the view that costs be in the cause.

Determination

10. That in view of the foregoing, the Court finds merit in the 1st Defendant’s Notice of Motion dated the 23/01/2023 and grants an order of stay of proceedings of this suit pending the hearing and determination of Nairobi Civil Appeal No. E392 of 2022. That costs of the application be in the cause.
11. Any party is at liberty to apply once the appeal is heard and determined.

It is so ordered

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF
NOVEMBER 2023.**

MOGENI J

JUDGE

In the virtual presence of:-

Mr Ochieng appearing with Ms. Mutegi for the 1st and 2nd Defendants.

Ms Kalsi for the 7th Defendant

Mr Owino holding brief for Mr Amoko for the 11th Defendant

Mr Olala holding brief for Mr Lotoro for the Plaintiff

Mr Chege for the 4th Defendant

Ms Matata for the 3rd Interested Party

Ms Mulindi for the 10th Defendant

No appearance for 3rd, 5th, 6th 8th 9th 12th, 13th, 14th interested parties

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MOGENI J

JUDGE

