



REPUBLIC OF KENYA



KENYA LAW
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**Ronoh v Chelaite (Deceased) & another (Environment and Land Appeal
33 of 2023) [2023] KEELC 22410 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL 33 OF 2023
A OMBWAYO, J
DECEMBER 14, 2023**

BETWEEN

EDWIN KIPROP RONOH APPLICANT

AND

ELIJAH KIPLAGAT KIPKEMEI CHELAITE (DECEASED) 1ST RESPONDENT

ALICEN JEMATIA RONO CHELAITE 2ND RESPONDENT

*(Being an appeal from the ruling of Hon. I.K Oenge Principal Magistrate
in Nakuru MCELC No.194 of 2022 delivered on 18th August 2023)*

RULING

1. Edwin Kiprop Ronoh hereinafter referred to as appellant(applicant) has lodged a memorandum of appeal in appeal No. 33 of 2023 from the ruling of the of Hon I.K Oenge. Principal Magistrate Nakuru MC ELC No.194 of 2022 delivered on 18th August 2023. The respondents are named as Elijah Kiplagat, Kipkemei Chelaite (deceased) and Aliceh Jemaite Rono Chelaite. The memorandum of appeal is accompanied with a Notice of motion dated 8th September 2023 seeking for an order of stay of proceedings in the lower court in respect of MC ELC No.194 of 2022 pending the hearing of the appeal.
2. The grounds of the application are that the Applicant has filed an Appeal against a ruling delivered on 1 8th August 2023 in which the Principal Magistrate's Court dismissed a Preliminary Objection that sought to strike out MCELC No.194 of 2022 on grounds that the Principal Magistrate's Court lacks pecuniary jurisdiction to entertain the said suit.
3. Moreover, that the Principal Magistrate's Court has allowed the Plaintiffs' application to have the suit heard on priority basis and has scheduled the matter for mention on 15th September 2023 with the intention to fix the case for hearing as soon as possible.



4. According to the applicant there is likelihood that the suit at the Lower Court may be heard and determined before the Appeal is heard and determined and the Applicant is apprehensive given the fact that the same Court called for the court file from Court 2 and issued final Orders on 21st December 2022 when the matter was supposed to be mentioned in Court No.2 for the purpose of directions.
5. The applicant contends that in the circumstances, it is imperative that the application filed herewith be certified as urgent and orders sought be granted *ex parte* in the first instance.
6. In the supporting affidavit the applicant states that the basis of the Preliminary Objection is that the Principal Magistrate's Court lacks pecuniary jurisdiction to entertain a suit given that the value of the suit property Ksh.40,000,000/= yet section 7 (l) (c) of the Magistrates Act 2015 caps pecuniary value for the Principal Magistrate's Court at Kenya Shillings Ten Million (Kshs10,000,000)-(Annexed hereto and marked EKR'2' is a copy of the valuation report).
7. The Honorable Magistrate has allowed an application filed by the Plaintiffs /Respondents seeking a hearing of MCELC No.194 of 2022 on priority basis and is likely to fix the matter for hearing within the shortest time when the same comes up for a mention on 15 September 2023.
8. The Honorable Court fixed the matter for hearing on 29th August 2023 shortly after delivering a ruling on 18th August 2023, but shelved the intended hearing after the applicants Advocate protested that provisions of Order 3 Rule 2, Order 4 Rule 1(2) & (3), Order 5 and Order 11 of the Civil Procedure Rules have not been complied with.
9. The applicant states that the 1st plaintiff who initiated the suit without the authority of the 2nd Plaintiff/ Respondent is now deceased. I have not seen the replying affidavit by the respondent. The applicant submits that this court has supervisory powers of the lower court pursuant to the Environment and Land Court Act section 13 (4) which provides that In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court and that under order 42 rule 6 (1) the court has the powers to stay proceedings pending appeal. He refers to the case of Ezekiel Mule Musembi -vs- Hyoung & Company (EA) Ltd where the court stated that this jurisdiction is meant to avoid a waste of valuable judicial time and to prevent the court from duplication of efforts and prevent multiplicity of suits and applications being filed and where if stay is not granted and the defendant were to succeed it would have rendered the appeal nugatory. The court went ahead to state that in such applications the court aims at ensuring that substantial loss and irreparable harm is not suffered by the applicant once the plaintiff proceeds with the suit and the appeal succeeds.
10. The appellant further refers to the case of Niazons (K) Ltd -vs- China Road & Bridge Corporation (K) Ltd where Onyango Otieno J (as he then was) held that where the appellant may have serious effects on the entire case so that stay of proceedings is not related to result of the appeal may well read to exercise futile stay should be granted. The applicant submits further that the application has been brought without unreasonable delay and that the 1st respondent is deceased and can't be substituted by operation of section 91 (4) of the Land Registration Act No.3 of 2012.
11. The respondent did not file submissions however, in the submission before the lower court the respondent acknowledged that the property had not been valued before the filing of the suit but the value could have increased when the property was developed. The valuation report on record shows that the property has a value of more than 20,000,000 shillings and therefore the lower court would lack jurisdiction in these circumstances.



12. In determining this application Order 42(6) of the *Civil Procedure Rules* provides that:-
- “No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
13. No order for stay of execution shall be made under subrule (1) unless—
- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
14. A decision on whether or not to grant stay of proceedings is discretionary and this Court has powers to stay proceedings pending an Appeal. This jurisdiction is derived from of Order 42 rule 6 (1) of the *Civil Procedure Rules*.
15. In the case of *Re Global Tours & Travel Ltd HCWC No.43 of 2000 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 matters, it should bear in mind such factors as the need for expeditious disposal of case, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously...”
16. The court in the case of *Kenya Wildlife Service –vs- James Mutembei [2019]* eKLR held that: -
- “...Stay of proceeding should not be confused with stay of execution pending appeal. 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...”
17. I do find that the application has been filed without unreasonable delay. Moreover, that if stay of proceedings is not granted the appeal will be rendered nugatory or futile and consequently, I do grant an order that there be stay of proceedings in Nakuru CM ELC No. 194 of 2022 pending hearing and determination of appeal. Costs in the appeal.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF
DECEMBER 2023.**

A. O. OMBWAYO

JUDGE

