



Beth Ndongoro & Co Advocates v Mizizi Holdings Limited & another (Environment and Land Appeal E037 of 2024) [2025] KEELC 3720 (KLR) (28 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3720 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E037 OF 2024**

AK BOR, J

APRIL 28, 2025

BETWEEN

BETH NDORONGO & CO ADVOCATES APPELLANT

AND

MIZIZI HOLDINGS LIMITED 1ST RESPONDENT

TARASILA WAMBUI P. GICHOVI 2ND RESPONDENT

RULING

1. Through the application dated 11/10/2024, the Appellant seeks to have the proceedings in Embu CM ELC Case No. 89 of 2018 stayed pending the hearing and determination of this appeal.
2. The Appellant brought this appeal against the orders issued by the Learned Magistrate on 29/7/2024 vide which the trial court declined to hear the Appellant's preliminary objection dated 18/7/2024 and directed that the grounds would be canvassed in the trial and determined in the judgment. Beth Ndongoro advocate swore the affidavit in support of the application and exhibited the impugned orders. She averred that she made a similar application before the trial court which was declined.
3. Mwangi K. Mukururi, the Company Secretary of the 1st Respondent swore the replying affidavit dated 26/3/2025 in opposition to the application. He supported the decision of the trial court that the preliminary objection had been raised late, about 11 days before the date scheduled for the hearing of the suit. He added that the matter came up for pre-trial directions on several occasions without the Appellant raising the objection. Mr. Mukururi gave the sequence of the proceedings which took place before the trial court and urged the court to disallow the application. He added that the suit had proceeded for hearing before the trial court on 29/7/2024 and 10/12/2024 and that the court was scheduled to deliver the judgment on 12/5/2025.



4. The court directed parties to file submissions. The 1st Respondent filed its submissions which the court has considered. It relied on Order 42 Rule 6 and several decisions on the exercise of the court's discretion to stay proceedings.
5. Upon careful consideration of the rival positions, this court is of the view that granting the orders sought in the application dated 11/10/2024 will not augur well with the duty of the court to ensure the expeditious disposal of disputes more so in light of the fact that the hearing of the suit already proceeded before the trial court and the matter is pending for judgment.
6. The court declines to grant the orders sought in the application dated 11/10/2024. The costs of the application shall abide the outcome of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 28TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Wanjiku Kamochu for the Appellant

Ms. Pauline Kanyike for the 1st Respondent

Diana Kemboi- Court Assistant

No appearance for the 2nd Respondent

