



Nyikiaa v Wanyoike; Ildamat Ventures Limited (Interested Party) (Environment & Land Case 660 of 2017) [2025] KEELC 3402 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3402 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 660 OF 2017**

**MD MWANGI, J
APRIL 25, 2025**

BETWEEN

VIRGINIA SEIN NYIKIAA PLAINTIFF

AND

ERICK MACHARIA WANYOIKE DEFENDANT

AND

ILDAMAT VENTURES LIMITED INTERESTED PARTY

RULING

(In respect to the notice of motion dated 4th March 2025 seeking to stay the proceedings in this case and to arrest delivery of an impending judgment pending hearing and determination of an appeal before the court of appeal).

Background.

1. The Applicant herein is the Interested Party who seeks to stay proceedings in this suit and to arrest delivery of what he terms as an impending judgment pending the hearing and determination of an appeal before the court of appeal; Civil Appeal No. E106 of 2025 against the ruling rendering in this case by my predecessor M.N. Gicheru J, on 11th November 2024. The ruling was in respect of an application for review dated 17th November 2023 which the Applicant had filed before this court.
2. The Applicant asserts that he had sought review of the order of this court issued on 24th October 2023 directing the County Land Registrar to file a report determining the ownership of the suit property. The court disallowed his application and he being dissatisfied with the said ruling lodged an appeal with the Court of Appeal. The appeal has since been assigned a case number and is pending determination by the Court of Appeal.



3. The Applicant's grievance was that the order to the Land Registrar was made after all parties had closed their respective cases. The issue therefore goes to the root of a fair hearing as the court will be aiding the Plaintiff to adduce further evidence through the Land Registrar.
4. The Applicant seeks to stay these proceedings to allow the determination of the appeal by the Court of appeal on whether or not the report by the Land Registrar shall be relied on in the determination of the ownership of the suit property, the subject matter of this suit.
5. When the matter came up for the hearing of the application, the court having confirmed service upon the Plaintiff and further having confirmed that the Plaintiff had not filed any response to the application in spite of service; issued a date for ruling. The Applicant was relying on the grounds on the face of the application and the supporting affidavit thereof.
6. Later on the same date, the Plaintiff filed grounds of opposition dated 7th March 2025 listing ten grounds in opposition to the application by the interested party but essentially raising three main issues, namely;
 - i. That the appeal by the Applicant is incompetent having been filed without leave of the court and for violating the provisions of Sections 75 of the Civil Procedure Act and Order 45 rule 6 of the Civil Procedure Rules.
 - ii. The Applicant has not adduced sufficient reasons in support of the application hence the application amounts to an abuse of the process of court; and
 - iii. The Applicant has not annexed the company's resolution/minutes allowing the filing of this application.

Issues for determination.

7. This matter has not yet been set down for judgment; therefore, the issue of arresting the judgment does not arise. The sole issue for determination therefore is whether it is in the interest of justice to stay these proceedings awaiting the hearing and determination of the appeal before the court of appeal.

Analysis and determination

8. There is no doubt that the Applicant has filed an appeal before the Court of Appeal. The Plaintiff/ Respondent's only issue with the appeal as alleged in his grounds of opposition is that the appeal is incompetent. I will leave the issue of the competence or otherwise of the appeal with the Court of Appeal which is duly seized of the same.
9. The assertion by the Plaintiff that the Applicant has not attached a resolution or minutes authorizing the filing of the current application is for want of a better word 'interesting'. I do not think that the law requires the filing of a resolution any time a company which is already a party to the suit requires to file an application within the suit or to reply to one, as the case may be.
10. With respect to prayer for stay of proceedings, Ringera J, (as he then was) aptly summarized the applicable principles in the case of *Re Global Tours & Travel Limited* (HCWC No. 43 of 2000), in the following words;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order 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 the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, 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.....”

11. The gravamen of the Applicant’s appeal as he puts it in his application is whether the report of the land registrar as ordered by the court should be relied on in the determination of the ownership of the suit property which is the issue at the centre of the case before this court. The determination of the appeal either way will therefore affect the conduct of this case and ultimately the final decision of the court.
12. I agree with the Applicant that the appeal will be rendered an academic exercise unless the order of stay of proceedings is granted. It would also be imprudent use of judicial time should this court proceed in one way and the Court of Appeal ultimately decides otherwise.
13. The court is therefore persuaded that it is in the interest of justice that an order of stay of proceedings be issued pending the hearing and determination of Civil Appeal No. E106 of 2025; Ildamat Ventures Limited –vs- Virginia Sein Nkiyaa and Erick Macharia Wanyoike.
14. The costs of the application shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF APRIL 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Chetambe for the Applicant

Mr. Itaya for the Plaintiff/Respondent

N/A by the Defendant

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

