



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYAHURURU**

**ELCA NO. E015 OF 2021**

**MWANGI STEPHEN MURIITHI**

**(suing as the guardian *Ad litem* of GRACE WANGARI MWANGI.....APPELLANT**

**VERSUS**

**ELSE WAIRIMU MWANGI.....RESPONDENT**

**RULING**

1. By a notice of motion dated 17<sup>th</sup> September, 2021 based upon **Sections 1A, 1B, & 3A of the Civil Procedure Act, (Cap. 21), Order 42 Rule 6 & Order 51 Rule 1 of the Civil Procedure Rules, 2010 (the Rules), and all enabling provisions of the law**, the Appellant sought a stay of proceedings in **Nyahururu CMCC No 219 of 2018** pending the hearing and determination of the instant appeal.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Appellant on 17<sup>th</sup> September, 2021. The Appellant contended that he was denied an opportunity to file a supplementary list of documents to enable him to introduce and produce the Registration Index Map dated 18<sup>th</sup> August, 2020. It was further contended that unless the stay sought was granted, the Appellant shall be compelled to conduct and conclude his defence case before the trial court thus rendering the appeal nugatory.
3. The Respondent filed a replying affidavit sworn on 12<sup>th</sup> October, 2021 in opposition to the application. It was contended that the application was frivolous, incompetent and otherwise an abuse of the court process. It was contended that the Appellant intended to introduce a new document after closure of the Respondent's case which would have amounted to a trial by ambush.
4. It was contended that the application was merely a delaying tactic intended to delay the conclusion of the suit before the trial court. The Respondent further contended that since she had already closed her case, she would suffer prejudice and injustice to stay the proceedings indefinitely. It was further contended that, in any event, the Appellant had not satisfied the legal requirements for granting a stay of proceedings pending appeal. The court was consequently urged to dismiss the application.
5. When the application was listed for *inter partes* hearing, it was directed that the same be canvassed through written submissions. The record shows that the Appellant's submissions were filed on 16<sup>th</sup> November, 2021 whereas the Respondent's submissions were filed on 8<sup>th</sup> December, 2021.
6. The court has considered the Appellant's notice of motion dated 17<sup>th</sup> September, 2021, the Respondent's replying affidavit in opposition thereto as well as the submissions on record. The court is of the opinion that the main question for determination herein is whether or not the Appellant has made out a case for an order for stay of proceedings pending appeal.
7. The Appellant submitted that he had made out a case for an order for stay of further proceedings pending appeal since the pending appeal might be rendered nugatory should the suit before the trial be concluded during the pendency of the appeal. He relied upon the case of **Ezekiel Mule Musembi v. H. Young & Co (E.A) Limited [2019] eKLR** in support of his application. The Respondent, on the other hand, submitted that the Appellant had failed to satisfy the stringent conditions for granting stay of proceedings. It was submitted that the Appellant was seeking to introduce new documents more than 3 years after close of pleadings and after closure of the Respondent's case. The Respondent cited the case of **Kenya Wildlife Service v James Mutembei [2019] eKLR** in opposition to the application.
8. The court has noted that in both cases cited by the parties, the case of **Global Tours & Travels Limited Nairobi Winding Up Cause No. 43 of 2000** was referred to. In the latter case, Ringera J (as he then was) summarized the applicable principles in an application for stay of proceedings as follows:

**“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 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.”**

9. In the **Kenya Wildlife Service Case (supra)** which was cited by the Respondent the High Court referred to **Halsbury’s Laws of England, 4<sup>th</sup> Edition. Vol. 37** page 330 - 332 and quoted the following passages:

**“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue...”**

**“This is a power which, it has been emphasized ought to be exercised sparingly, and only in exceptional cases”.**

10. The court has noted from the material on record that the suit before the trial court has been pending for at least 4 years before the court. It is also evident that the suit is part-heard and that the Respondent had already closed her case by the time the Appellant sought to introduce new documentary evidence at the trial. The court is of the opinion that there are no special or exceptional circumstances which have been demonstrated by the Appellant to warrant a stay of proceedings. The court is of the opinion that granting a stay for an indefinite period may cause undue delay in the conclusion of the suit thereby occasioning a miscarriage of justice.

11. The upshot of the foregoing is that the court is not satisfied that the Appellant has made out a case for the grant of stay of proceedings before the trial court. Accordingly, the Appellant’s notice of motion dated 17<sup>th</sup> September, 2021 is hereby dismissed. Costs shall be costs in the appeal. Orders accordingly.

**RULING DATED AND SIGNED IN CHAMBERS AT NYAHURURU THIS 17TH DAY OF FEBRUARY, 2021 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Mr. Waichungo for the Appellant

Mrs. Maina for the Respondent

CA- Carol

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**Y. M. ANGIMA**

**JUDGE**