



**Emmanuel Gichira c/o International Christian Assembly v Githatu (Environment and Land Appeal E038 of 2025) [2025] KEELC 4523 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 4523 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E038 OF 2025**

**JG KEMEI, J**

**APRIL 8, 2025**

**BETWEEN**

**EMMANUEL GICHIRA C/O INTERNATIONAL CHRISTIAN  
ASSEMBLY ..... APPELLANT**

**AND**

**MATHINE GITHATU ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Appellant's application dated 14/3/25 expressed to be brought under the provisions of Section 1A, 3A and 63 (e) of the *Civil Procedure Act*, Cap. 21 and Order 42 Rule 6(1) and Order 51 Rule 1 of the Civil Procedure Rules. The Appellant seeks substantively for orders that;
  - a. There be a stay of proceedings in Milimani CMELC No. E199 of 2023 pending the hearing and determination of Milimani Environment and Land Court Civil Appeal No. E038 of 2025.
  - b. The costs of this application be borne by the Respondents.
2. The application is based on the grounds on the face of it and further supported by the Appellant's Affidavit of even date. The Applicant avers that he is aggrieved by the whole Ruling delivered in the Lower Court on 30/01/2025 by Hon. Chief Magistrate Pamela Achieng' in Milimani CMELC No. E199 of 2023. He states that the suit pending before the Lower Court is slated for hearing on 18/6/25.
3. The Applicant contends he shall be prejudiced if the proceedings in the Lower Court, which are subject of this appeal, are not stayed. That the instant appeal shall be rendered nugatory and an academic exercise as the appeal is on joinder of parties. He avers that the Respondent will not be prejudiced if the orders sought are granted.



4. He asserts that he has an arguable appeal that raises triable issues that need to be determined on merit. Therefore, any further proceedings in the Lower Court will render the appeal nugatory. He prays that the orders sought be granted.
5. The Respondent opposed the application vide his Replying Affidavit sworn on 27/03/2025. He avers that the instant application is a mere delay tactic hence the court should not be inclined to grant the orders sought. That the Ruling delivered on 30/1/2025 was a solid Ruling as such there is no arguable appeal with chances of success.
6. He contends that the appeal is hopeless on the basis that the impugned application before the Lower Court sought conflicting orders, that is; on one hand it sought dismissal orders for lack of locus standi to institute the proceedings and that there was no cause of action and at the same time sought joinder of parties in the matter. That evidently, the court could not grant such orders. He maintains that he has the locus standi as he is the owner of Plot No. 162 erected on LR No. 13166, the suit property therein which has been leased to the Appellant.
7. He further avers that the suit before the trial court seeks to recover rent arrears and evict the Appellant from the land for breach of the terms of the Lease Agreement dated 22/11/ 2014.
8. It is on that basis that he prays that the court in exercising its discretionary powers on stay of proceedings, the said powers be exercised in his favour and allow the Lower Court matter to proceed to its logical conclusion. More so, since the Appellant remains in occupation of his property without paying rent. That a further delay in hearing the matter in the lower court, exposes him to great prejudice yet the Appellant is staying on his property without paying rent. He argues that the appeal shall not be rendered nugatory as the suit before the trial court is purely contractual. He prays that the application be dismissed with costs.
9. The court, directed that the application be canvassed orally in Court. Parties submitted respectively in support of their respective positions. The Court has considered the arguments raised by the parties.
10. I have considered the application, the reply as well as the rival oral submissions on record. In my considered view that the only for determination is;
  - (a) Whether this court ought to grant stay of proceedings in Milimani CMELC No. E199 of 2023 pending hearing of this appeal.
11. The law on stay of proceedings pending appeal is provided for in Section 6 of the *Civil Procedure Act* to the effect that where an issue is directly and substantially in issue in proceedings between the same parties, another court ought to stay its proceedings in respect of such suit. Stay of proceedings is further alluded to under Order 42 Rule 6(1).
12. In the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*, the court held 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.

13. The Halsbury's Law of England 4<sup>th</sup> Edition Vol. 37 pages 330 and 332 states that; "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 proceeding 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.

"It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the Plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case."

14. In the case of William Odhiambo Ramogi & 2 Others –vs- The Honourable Attorney General & 3 Others [2019] eKLR, a 5-judge Bench of the High Court, laid out the principles our Courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory Application to a higher Court. See: Kenya Shell Limited vs. Benjamin Karuga Kibiru & Another [1986] eKLR; Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000); David Morton Silverstein vs. Atsango Chesoni [2002] eKLR: They laid down the following six principles:

- a. First, there must be an appeal pending before the higher Court;
- b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an Application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an Application for stay of proceedings to inordinately delay trial, there is a policy in favour of Applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
- c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
- d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
- e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
- f. Sixth, the Applicant must demonstrate that the Application for stay was filed expeditiously and without delay.

15. It is therefore clear that in determining whether or not to grant an order for stay of proceedings, the court must bear in mind the general rule that once a suit is filed, proceedings ought to continue without interruption until the suit is determined. This is premised on the right of every person to a fair trial which includes the right to have the trial begin and conclude without unreasonable delay as enshrined



in Article 50 (1) of *the Constitution* as well as the principle that justice delayed is justice denied, being a cardinal principle that guides courts in the exercise of judicial authority. It is against this background that orders for stay of proceedings ought to be sparingly granted and only in exceptional circumstances that demonstrate that there are compelling reasons and it would go against all that is deemed just and fair to proceed with the suit.

16. It is also important to note that stay of proceedings orders are issued at the discretion of the Court save to say that the unfettered powers should be exercised judicially and not capriciously at the whim of the Court. See the case of Kenya Wildlife Service – vs- James Mutembei [2019] eKLR where it 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. In the instant case, the Appellant states that it is in the interest of justice to grant the stay proceedings in the lower court as he seeks to challenge the Lower Court’s Ruling delivered on 30/01/2025. Among the orders sought in the application dated 26/7/2024 subject of the Ruling before the Lower Court was that the Court the Plaintiff lacked the locus standi to institute the suit and that the suit was sub-judice. In my view, the Defendant was challenging inter alia the jurisdiction of the Lower Court.

18. Jurisdiction is everything. It is a question of law; it either exists or not. It goes to the root of a matter before a Court of law and can be raised at any time by any party or a Court on its motion. In the event that this court establishes that in deed the Plaintiff lacked locus before the Lower, then the proceedings before it will be rendered null and void. Further, should the matter proceed to trial before the court determine whether the non-joinder of the parties as sought was merited, the Appellant shall be prejudiced.

19. Therefore, in order to save the precious judicial time and to avoid the issuance of conflicting orders, the facts and circumstances in this case justify the exercise of this Court’s discretion in favour of the Appellant/ Applicant. The prayer for stay of proceedings pending appeal is well merited.

20. In the upshot I allow the application as follows:

- a. There be a stay of proceedings in Milimani CMELC No. E199 of 2023 pending hearing of this appeal.
- b. The Appellant is granted 45 days from the date of this Ruling to file the Record of Appeal.
- c. Costs of this application shall be in the cause.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. N/A for the Applicant
2. Kipkoech for the Respondent
3. CA- Ms Yvette Njoroge

