



**Mulinge v Wahome (Suing as the Legal Representative of Wahome Waithaka - Deceased)
(Environment and Land Appeal E022 of 2024) [2025] KEELC 3329 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3329 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E022 OF 2024**

**AK BOR, J
APRIL 8, 2025**

BETWEEN

SAMUEL MULINGE APPLICANT

AND

**JANE MUTHONI WAHOME (SUING AS THE LEGAL REPRESENTATIVE OF
WAHOME WAITHAKA - DECEASED) RESPONDENT**

RULING

1. The Applicant filed the application dated 3/6/2024 seeking stay of proceedings in Siakago MC ELC No. E022 of 2023 pending hearing and determination of this appeal. The application was made on the grounds that the Applicant filed a preliminary objection in Siakago MC ELC NO. E022 of 2023 and the court delivered its ruling on 24/4/2024. Being dissatisfied with the ruling, he filed this appeal which in his view was arguable with a high chance of success.
2. It was the Applicant's position that unless the orders for stay of proceedings in the suit were granted, the outcome of appeal would be a nullity and that he would suffer substantial loss and injustice. He added that the application had been filed without unreasonable delay. The Appellant swore the affidavit in support of the application and annexed a copy of the ruling together with the memorandum of appeal.
3. The Respondent opposed the application through her replying affidavit where she deponed that the application was an abuse of the court process and lacked merit. Further, that the ruling of the Magistrate's Court found that the preliminary objection lacked basis. She urged that the Appellant should defend the suit which was set for hearing on 4/12/2024.
4. The issue for determination is whether this court should stay the proceedings in Siakago MCELC No. E022 of 2023 pending hearing and determination of the appeal.
5. The principles governing the grant of stay of proceedings are well established. There must be an appeal pending and the applicant must demonstrate that the appeal raises substantial questions



to be determined or is otherwise arguable. Additionally, the applicant must demonstrate that the appeal would be rendered nugatory if the stay of proceedings is not granted. The applicant must also demonstrate that there are exceptional circumstances warranting the stay of proceedings and it must be demonstrated that the application for stay was filed expeditiously and without delay.

6. While an arguable appeal need not be one that will necessarily succeed, it has to be one which ought to be fully argued before the court, not frivolous as has been held in numerous court decisions. This appeal relates to the jurisdiction of the lower court to entertain the suit by dint of Section 30 of the *Land Adjudication Act*. In this court's view, that is an issue that this court must evaluate in the appeal by assessing the trial court's reasoning against the Applicant's objections and make its own determination. This court is not persuaded that the appeal will be rendered nugatory if orders for the stay of proceedings are not be granted. The Applicant has not demonstrated the existence of exceptional circumstances that justify staying the proceedings rather than allow the trial court to proceed with the suit to its logical conclusion and later addressing any grievances through an appeal. The applicant has not met the threshold for grant of stay of proceedings pending appeal.
7. The court declines to grant the orders sought in the application dated 3/6/2024. Costs shall be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 8TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Diana Kemboi- Court Assistant

No appearance for the Applicant and Respondent

