



REPUBLIC OF KENYA



KENYA LAW
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**Maisha Mabati Mills Limited v Farm Auto Spares Limited (Civil Suit
762 of 2017) [2022] KEELC 2809 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2809 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CIVIL SUIT 762 OF 2017

JA MOGENI, J

MAY 19, 2022

IN THE MATTER OF LAND REFERENCE NUMBER 209/5650 NAIROBI

AND

**IN THE MATTER OF AN APPLICATION FOR A DECLARATION THAT THE PLAINTIFF
HAS OBTAINED OWNERSHIP OF A PORTION OF LAND REFERENCE NUMBER 209/5650
NAIROBI BEING 0.0925 HECTARES THEREOF BY WAY OF ADVERSE POSSESSION**

BETWEEN

MAISHA MABATI MILLS LIMITED PLAINTIFF

AND

FARM AUTO SPARES LIMITED DEFENDANT

RULING

1. Before me is an application dated 26/04/2022 where the applicant/plaintiff is seeking a stay of proceedings in ELC No. 762 of 2017 pending the hearing and determination of the applicant's intended Appeal. The grounds in support of the application are that:
 - i. Spent
 - ii. Pending the inter partes hearing and determination of this Application this Honorable Court be pleased to stay any other proceedings in this matter.
 - iii. Pending the hearing and determination of the Applicant's intended Appeal to the Court of Appeal in respect of the Ruling by the Learned Judge J. Mogeni delivered on 16th March 2022 this Honorable Court be pleased to stay further proceedings in this matter n of this Application this Honorable Court be pleased to stay any other proceedings in this matter.
 - iv. Costs of this Application be provided for



2. The applicant has also filed a supporting affidavit where he has reiterated the grounds set out in the face of the application adding that this court’s decision of 16/03/2022 was detrimental to the plaintiff’s case and infringed on the plaintiff’s right to fair trial under Article 50(1) of the Kenyan 2010 Constitution. He also avers that if the order for stay of proceedings is not granted, the intended appeal will be rendered nugatory and a mere academic exercise.
3. The Applicant in his argument also made reference to the following cases, *George Oduori Otieno vs African Trade Insurance Agency & Another* [2020]eKLR, *Global Tours & Tours Travel Limited*, Nairobi HC Winding Up Cause No. 43 of 2000, *Francis Njakwe Gitbiari & Another vs Daniel Toroitich Arap Moi t/a Moi Education Centre* [2006] eKLR, *Mary Odongo Omollo & Another vs Hellen Auma Ojuok* [2021]eKLR among others.
4. The defendant has opposed the application vide his grounds of opposition dated 04/05/2022. He stated that the application is res judicata since the plaintiff had made a similar application orally on 16/03/2022 which was declined.
5. Significant prejudice will be occasioned if the proceedings are stayed but to the contrary there will be prejudice suffered by the applicant if the proceedings are not stayed.
6. The defendant relied on the following cases *Kenya Wildlife Service vs James Mutembei* [2019]eKLR, *Parkire Stephen Munkasio & 14 Others (suing on their own behalf and behalf of their families and the members of the Maasai Community living on land reference number 8396(I.R11977) situated in Kedong vs Kedong Ranch Limited & 8 Others* [2015] eKLR.
7. I have considered all the arguments raised herein. The question for determination is whether to grant the orders of stay of proceedings before the delivery of the judgment.
8. The Court quoted Ringera J (as he then was) in the case of *Kenya Power & Lighting Co. Ltd vs. Esther Wanjiru Wokebii* Civil Appeal No. 326 of 2013 (2014) eKLR when he stated the following when confronted by a similar application in the case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000

“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. The Court then distilled the following three main principles to guide a Court in such applications:
 - a. Whether the Applicant has established that he/she has a prima facie arguable case.
 - b. Whether the application was filed expeditiously and
 - c. Whether the Applicant has established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders sought.



10. In *Christopher Ndolo Mutuku & Another vs. CFC Stanbic Bank Ltd* (2015) eKLR, the Court observed that;

“...what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”
11. The Applicant moved the Court seeking for orders for stay of the proceedings. It is this application that the Applicants intend to appeal against in the Court of appeal. I have seen a Notice of Appeal dated 24/03/2022. The Ruling which is the subject of this application was delivered on the 16/03/2022 and this application was filed on the 26/04/2022. The Court is of the view that the application was filed timeously.
12. The hearing of this case had proceeded inter partes and concluded on 03/03/2022 and the fate of this case is awaiting delivery of judgment. There are therefore no further proceedings to be stayed in the suit as the hearing is already spent. This Court is being called in aid to take an action in vain.
13. Section 6 of the *Civil Procedure Act* provides as follows;

“No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed”
14. The above section is a bar to parallel prosecution of cases in two forums of equal jurisdiction. The Court notes that there are no orders of the superior Court staying the proceedings in this case.
15. Section 3A of the *Civil Procedure Act* provides as follows;

“Nothing in this Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court”
16. Section 3A of the *Civil Procedure Act* relates to the wide powers of the Court to exercise its discretion to the end of justice between the parties. This Court already expressed itself in the ruling delivered on 16/03/2022 in respect to exercising its discretion to grant prayers to stay proceedings following the oral application made by Counsel for the applicant. This Court takes the view that this application being similar to the one made on 16/03/2022 stands already adjudged as far as the issue of stay of proceedings is concerned. The Applicant has not established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders sought.
17. In the case of *Kenya Wildlife Service versus James Mutembei* [2019] eKLR, my brother, Justice Gikonyo observed that ‘stay of proceedings is a grave judicial action which 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 proceedings is high and stringent. I need not buttress any further this point as it is well put. The Applicant has not demonstrated any loss or damage that would be occasioned if the judgment would be delivered.
18. Based on the above, I find that the Applicant’s Notice of Motion dated 26/04/2022 is without merit and the same is dismissed with costs to the defendant.



**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 19TH DAY
OF MAY, 2022**

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MOGENI J

JUDGE

In presence of

Ms. Mutisya h/b for Mr. Omimo for the Plaintiff/Applicant

Mr. Mwangi for the Defendant/Respondent

