



REPUBLIC OF KENYA



**Kariuki (suing as a Representative of Samuel Kariuki Chege) &  
8 others v Mwangi & 2 others (Environment and Land Appeal  
103 of 2021) [2022] KEELC 2658 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2658 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL 103 OF 2021**

**JG KEMEL, J**

**JUNE 30, 2022**

**BETWEEN**

**DAVID CHEGE KARIUKI (SUING AS A REPRESENTATIVE OF SAMUEL  
KARIUKI CHEGE) ..... 1<sup>ST</sup> APPELLANT**  
**EDWARD WANJAGI NDUNGU ..... 2<sup>ND</sup> APPELLANT**  
**HENRY KIMANI WATHIRU ..... 3<sup>RD</sup> APPELLANT**  
**LILIAN WANJA MBURU ..... 4<sup>TH</sup> APPELLANT**  
**VIRGINIA NJERI NDUNGU ..... 5<sup>TH</sup> APPELLANT**  
**PETER KAMAU THUO ..... 6<sup>TH</sup> APPELLANT**  
**MARGARET WARUGURU KANYIRA ..... 7<sup>TH</sup> APPELLANT**  
**MATIAS NDONGA KABIRU ..... 8<sup>TH</sup> APPELLANT**  
**JOHN MURIITHI MBARIRE ..... 9<sup>TH</sup> APPELLANT**

**AND**

**NGANGA MWANGI ..... 1<sup>ST</sup> RESPONDENT**  
**DISTRICT SURVEY RUIRU ..... 2<sup>ND</sup> RESPONDENT**  
**DISTRICT LAND REGSITRAR ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Appellants/Applicants filed the instant Motion dated 26/11/2021 against the Respondents under Order 40 Rules 1 & 2, Order 51 Rule 15 [Civil Procedure Rules](#) seeking Orders that;



- a. Spent.
  - b. Spent.
  - c. This Honorable Courts be pleased to grant stay of proceedings in Civil Suit No. 429 of 2019 at Ruiru pending the hearing and determination of the intended appeal.
  - d. Costs of this application be provided for.
2. The application is based on the grounds on the face it that are reiterated in the Supporting Affidavit of even date of Edward Wanjagi Ndungu, the 2<sup>nd</sup> Applicant. He deponed that he was duly authorized to swear the Affidavit on behalf of the other Applicants. That the Applicants are aggrieved by the Ruling, annexure 1, in respect of the Noticed of Motion dated 29/10/2021 delivered on 26/11/2021 by Hon. C.K Kisiangani SRM and thus appealed against it. Copy of the Memorandum of appeal dated 26/11/2021 was annexed as annexure 2. That it is in the interest of justice that the application be allowed to forestall a travesty of justice.
  3. The 1<sup>st</sup> Respondent Ng'ang'a Mwangi filed his Replying Affidavit dated 12/1/2022. He avowed that the 2<sup>nd</sup> Applicant lacked express consent to swear the Supporting Affidavit as alleged. That the Applicants' appeal is incompetent and has no chances of success because the impugned trial Courts Ruling was in respect of the Applicants' Notice of Motion dated 29/10/2021 that sought stay of the proceedings in Ruiru Civil Suit 429 of 2019 pending the hearing and determination of Civil App. No. E252 of 2020 at the Courts of Appeal; that the Courts of Appeal Application No. E252 of 2020 filed on 19/8/2020 and has never been prosecuted. That it arose from Nbi Criminal Appeal No. 70 of 2017 being an appeal from Nbi CM Criminal Case No. 644 of 2012. That all these suits are within the Applicants' knowledge and the filing of the instant application when judgment in the trial Courts was slated for 27/1/2022 is not only malicious but an abuse of the process of the Court. Accordingly, that the orders sought herein have been overtaken by events and the Applicants have not demonstrated any prejudice if the Motion is dismissed with costs.
  4. On 17/3/2022 directions were taken to prosecute the Application by way of written submissions. None of the parties complied with the said directions.
  5. The germane issue for determination is whether the application is merited.
  6. An order for stay of proceedings is discretionary in nature for deserving cases. The test for stay of proceeding is high and stringent as held by Ringera J in the persuasive case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000 that;

“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 Courts 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.”



7. This prayer is a subject of *Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332*, 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.”

8. The 1<sup>st</sup> Respondents averred that the trial Courts suit was pending Judgment on 27/1/2022 so that the prayers sought in the application, are overtaken by events. The Applicant did not rebut these averments.

9. The gist of the Application is partly hinged on the Trial Courts Ruling delivered on 26/11/2021 which was alluded to in the Supporting Affidavit as annexure 1. However, no copy of the said Ruling was annexed to inform the Courts the current position of the trial Courts proceedings. Annexure 1 is an email extract of a letter sent to the trial Court.

10. The Applicant also annexed copy of Memorandum of Appeal which reveals that there was another ELC Suit No. 52 of 2020 which according to para. 4 of the Memorandum of Appeal, is a subject of Civil Appeal No. E252 of 2020. It behooved the Applicant seeking orders in this Motion to lay down all the facts material to the application. I say so because the Applicant alluded to orders dismissing the notice of Motion dated the 11/4/2019 and the Preliminary objection dated the 11/4/2019 dismissing the application dated the 1/4/2019. These pleadings have not been annexed to inform the Courts of the nature of the prayers that may have been sought by the parties and the status of the said Motions. The Applicant has just thrown an application before the Courts and expects it to read their minds on what the substance of their application is all about.

11. In the end the application is unmerited and it is for striking out with costs payable by the Applicants.

12. It is so ordered.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 30<sup>TH</sup> DAY OF JUNE 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

1<sup>st</sup> – 9<sup>th</sup> Appellant/Applicant - Absent

1<sup>st</sup> Respondent – Muturi Njoroge

2<sup>nd</sup> & 3<sup>rd</sup> Respondent - Absent

Court Assistant – Phyllis Mwangi

