



REPUBLIC OF KENYA



KENYA LAW
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**Chumo & 2 others v Lelei (Environment and Land Case Civil Suit
63 of 2021) [2022] KEELC 3995 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3995 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND CASE CIVIL SUIT 63 OF 2021**

MN MWANYALE, J

JULY 28, 2022

BETWEEN

JOSHUA KIPKEMEI CHUMO 1ST APPLICANT

WILSON CHUMO 2ND APPLICANT

DAVID CHUMO 3RD APPLICANT

AND

JAPHETH KIBIWOTT LELEI RESPONDENT

RULING

1. The Notice of Motion before me dated 1st March 2022 is brought under Order 42 and 43 of the [Civil Procedure Rules](#). The prayers falling for my consideration are:-
 - i) Spent
 - ii) Spent
 - iii) Pending the hearing and the determination of the appeal in Eldoret Court of Appeal there be an order staying further proceedings in this matter.
 - iv) Costs of the application be borne by the Defendant.
2. The application rests on the grounds on the face of it and Supporting Affidavit of Joshua Kipkemei Chumo, the 1st Plaintiff. The major grounds in support of the application is that there is a pending appeal challenging the ruling of this Court delivered on 25th January 2022 and that unless the is stay of proceedings in this matter, the appeal will be rendered nugatory.
3. The Respondent is opposed to the Application and is so doing files a Replying Affidavit dated 14th April 2022 sworn by Japhet Kibiwott Lelei. The Respondent avers that the application is meant to delay expedient hearing, determination and conclusion of this suit.



4. The 5th Defendant in the Counter Claim indicated on 20th June 2022 that they are not opposed to the application.
5. Upon service of Replying Affidavit, the Plaintiffs/Applicants filed Supplementary Affidavit dated 12th May 2022 while the Defendant/Respondent sought leave to file a further affidavit in response.
6. Directions were taken that the application be canvassed by way of written submissions. The Applicants submissions were filed on 9th June 2022 while those of the Respondent was filed on 13th June 2022.
7. The Applicants reiterated the grounds set out above and emphasized that there is sufficient reasons to stay this proceedings lest the appeal be rendered nugatory.
8. On the other hand, it was submitted by the Respondent that the Applicants have not met further that the application was meant to delay hearing of the instant suit which is related to previous suits that have been pending before Court for over 26 years.

Analysis and Determination:

9. I have carefully considered the instant application, Replying Affidavit, Supplementary Affidavit and rival submissions filed by the parties herein. Basically this is an application for stay of proceedings in this suit pending hearing and determination of an appeal against the ruling of this Court delivered on 25th January, 2022. A decision on whether or not to grant stay of proceedings is discretionary and is guided by the provisions of Order 42 rule 6 (1) of the Civil Procedure Rules. It provides that: “ 6. Stay in case of Appeal
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may seem just and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have to have such order set aside.”
10. In Kenya Wildlife Service vs James Mutembei (2019) eKLR, Gikonyo J persuasively stated, which I am ably persuaded, that:

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impunges on right of access to justice, right to be heard without delay and overall, the right to fair trial, therefore the test for stay of proceedings in high and stringent.”
11. As rightly submitted by the Respondent, the test for stay of proceedings was explained in the case of Global Tours and Travels Limited; Nairobi H. C. Winding up cause No. 43 of 2000 where Ringera J (as he was then) held 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 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 case, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether is it an arguable one, the scarcity and optimum utilization of judicial time and whether the application had been brought expeditiously.”

12. In the instant case, it is my considered opinion that it would not be in the interest of justice to exercise Court’s discretion and grant stay of proceedings as it will only serve the purpose of delaying this matter that has been pending before Court since the year 2012 (9 years ago).
13. In my view, it would be in the interest of justice to dispose of this suit judiciously and expeditiously in furtherance of the provisions of Article 159 (2) (b) of *the Constitution* of Kenya. Moreover, it is prudent that the issues raised in this suit and counter claim be heard and determined on merit. In the event a party will be aggrieved by the decision of this Court, then they have recourse to appeal to the Court of Appeal.
14. For the above reasons, I find that the pros of not granting stay of proceedings outweigh the cons as expressed by Ringera J (as he was then) in the case Global Tours and Travels Limited cited herein.
15. Consequently the application dated 1st March 2022, is dismissed with costs to the Defendant/ Respondent.

DATED AT KAPSABET THIS 28TH DAY OF JULY, 2022.

HON. M. N. MWANYALE,

JUDGE

Delivered in the presence of;

Mr. Mwetich for Defendant/Respondent

Mr. Momanyi for Plaintiff/Applicant

No appearance for Mr. Nyamberega

No appearance for the Attorney General

