



**Beth Ndorongo t/a Beth Ndorongo & Co. Advocates v Mizizi Holding Ltd & another
(Environment and Land Appeal E016 of 2025) [2025] KEELC 3817 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E016 OF 2025**

**AK BOR, J
MAY 7, 2025**

BETWEEN

**BETH NDORONGO T/A BETH NDORONGO & CO.
ADVOCATES APPELLANT**

AND

**MIZIZI HOLDING LTD 1ST RESPONDENT
TARASILA WAMBUI P. GICHOVI 2ND RESPONDENT**

RULING

1. The Appellant, Beth Ndorongo who trades as Beth Ndorongo & Co. Advocates filed the application dated 3/4/2025 seeking stay of further proceedings in Embu CM ELC Case No. 89 of 2018 pending the hearing and determination of the appeal. The application was made on the grounds that the Appellant filed this appeal against the ruling issued by Hon Atieno J. Otieno (SRM) on 13/3/2025 in Embu CM ELC Case No. 89 of 2018. She sought to stay further proceedings specifically the delivery of judgment scheduled for 12/5/2025 in the case.
2. It is her case that she was sued in the Magistrate's Court by the 1st Respondent for professional negligence in a land sale contract which the 2nd Respondent breached. Her grievance was that the court ruled that the matter would proceed in the absence of her advocate despite her making an application to be granted time to prepare herself to conduct the case and retrieve the file from her advocate. Further, that she tried to reopen the case by filing an application on 20/1/2025 but the application was dismissed on 13/3/2025 hence this appeal. She contended that as a litigant, she felt highly prejudiced if she were not accorded an opportunity to defend herself and her profession and that no prejudice would be occasioned to the Respondents if the case were heard and determined on merit. She swore the affidavit in support of the application and attached a copy of the memorandum of appeal.



3. The 1st Respondent opposed the application through the replying affidavit sworn by Mwangi K. Mukururi who deponed that the application lacked merit, did not disclose sufficient grounds to warrant the stay of proceedings in the lower court, and that it was part of the Appellant's sustained efforts to obstruct, delay and subvert the due administration of justice. He added that the Appellant had filed multiple applications and appeals based on substantially similar issues, some of which were already been heard and dismissed for lack of merit, and as an abuse of the court process. He stated that throughout the conduct of the lower court proceedings the Appellant had engaged in a consistent pattern of delaying tactics characterized by repeated applications for adjournment, the filing of interlocutory appeals against purely procedural and none conclusive rulings that do not determine the parties' substantive rights purely for the purpose of delay and, refusing to participate in hearings once adjournments were denied.
4. It was also contended that the present application was yet another attempt to misuse the court process, filed not in pursuit of a legitimate grievance, but to delay the conclusion of the suit and deny the 1st Respondent the right to expeditious justice as enshrined under article 159 (2) (b) of *the Constitution*. The 1st Respondent urged that litigation must come to an end and that the court should be guided by the overriding objective under the *Civil Procedure Act*. Further, that the Appellant's conduct had greatly prejudiced the 1st Respondent by subjecting it to prolonged and unnecessary litigation and delayed resolution of the suit in the magistrates' court.
5. Mr. Mukururi urged the court to dismiss the application which he termed as frivolous, vexatious and a gross abuse of the court process and attached copies of the magistrates' court's ruling dated 13/3/2025, the hearing notice of 23/10/2024 and copies of the CTS extracts demonstrate the Appellant's conduct.
6. The court directed parties to file and exchange written submissions which it has considered. The Appellant submitted that all she seeks was an opportunity to participate in the proceedings and that it was the duty of the court to consider the overriding objective and balance the interests of the parties to the suit. She submitted that if she were denied an opportunity to ventilate her issues before the trial court, it would highly prejudice her and her legal professional duty. She argued that she had an arguable appeal with high chances of success and relied on the memorandum of appeal.
7. The 1st Respondent submitted that the Appellant seeks stay of the proceedings in the magistrate's court without establishing exceptional or sufficient cause and without due regard to the interests of justice. It submitted that the current application was a replica of an earlier application dated 11/10/2024 filed in ELC Appeal No. 037 of 2024 involving the same parties and the same subject over which this court delivered a ruling on 28/4/2024 and declined to grant the orders sought. It was submitted further that the instant application constituted forum shopping and re-litigation of matters already conclusively determined, in violation of the doctrine of res judicata under Section 7 of the *Civil Procedure Act*. Ultimately it was urged that the application should be dismissed.
8. The issue for determination is whether the Appellant is entitled to an order of stay of proceedings in Embu CME & L case no. 89 of 2018. The principles governing the grant of stay of proceedings are well established. In *William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR the court restated the principles for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher court. These are that there must be an appeal pending before the higher court and where such stay is sought in the court hearing the case as opposed to the higher court where the appeal has been filed and there is no express provision of the law allowing for such an application, the appellant should explain why the stay was not been sought in the higher court 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 by the court to which an appeal is preferred because that court was familiar with its docket and could calibrate any order it gives accordingly. The other principles are that the applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable and that the appeal would be rendered nugatory if the stay of proceedings is not granted. Also, that the applicant must demonstrate that there were exceptional circumstances which warranted the stay of proceedings as opposed to having the case concluded and all arising grievances taken up on a single appeal. The application for stay must be filed expeditiously and without delay.

9. The Appellant contends that she stands to suffer grave prejudice if the proceedings in the magistrates' court are not stayed, particularly because she will be denied an opportunity to defend herself against allegations of professional negligence. She maintained that her appeal was arguable with a high chance of success. The 1st Respondents on the other hand, contended that the application did not meet the threshold for the stay of proceedings. It took the position that the application was part of a repetitive and abusive litigation pattern, with the Appellant filing similar applications and appeals intended solely to deliberately delay the matter. They asserted that no exceptional or sufficient grounds had been shown, and that the present application was *res judicata*, having been effectively dealt with in ELC Appeal No. 037 of 2024.
10. Applying the principles for grant of stay of proceedings to the facts of this case, it is not in dispute that the Appellant has filed an appeal against the ruling delivered on 13/3/2025. The Appellant asserted that her appeal was arguable but she failed to demonstrate the arguable issues. The Appellant did not demonstrate how the appeal would be rendered nugatory if the proceedings continued.
11. The 1st Respondent demonstrated that there had been unreasonable delay in finalising the suit before the magistrates' court and that that was occasioned by the Appellant's conduct. There is sufficient evidence to show that the Appellant was granted several opportunities to defend the case but has failed to do so. At the end of the day, the court has to balance the interests of all the parties involved on whether to stay proceedings or not as they have the effect of delaying proceedings even further.
12. The Appellant has failed to meet the threshold for the grant of stay of proceedings. The court declines to grant the orders sought in the application dated 3/4/2025. The 1st Respondent shall have costs of the application.

DELIVERED VIRTUALLY AT EMBU THIS 7TH DAY OF MAY 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Pauline Kanyeki for the 1st Respondent

Diana Kemboi- Court Assistant

No appearance for the Appellant and 2nd Respondent

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