



**Kitavi v Chesiriken (Suing as Personal Representative of Enock M Psenjen (Deceased)) & 2 others (Environmental and Land Originating Summons E005 of 2022) [2025] KEELC 4340 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4340 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2022**

**CK NZILI, J**

**JUNE 9, 2025**

**BETWEEN**

**ROSE NALIKA KITAVI ..... PLAINTIFF**

**AND**

**LOIS CHESIRIKEN (SUING AS PERSONAL REPRESENTATIVE OF ENOCK M PSENJEN (DECEASED)) ..... 1<sup>ST</sup> DEFENDANT**

**STEPHEN KIPLANGAT PJENJEN (SUING AS PERSONAL REPRESENTATIVE OF ENOCK M PSENJEN (DECEASED)) ..... 2<sup>ND</sup> DEFENDANT**

**VICTORIA KAMULE MASINDE ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The court, by an application dated 2/X0/2024, is asked by the 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants to stay the suit pending hearing and determination of the Kisumu Court of Appeal Civil Appeal No. E008 of 2021, Lois Chesiriken & Stephen Kiplangat Psenjen -vs- Victoria Masinde & Amy Chelagat Kiptui. The reasons are contained on the face of the application and in a supporting affidavit of Stephen Kiplangat Psenjen, sworn on 29/6/2024. The applicants depose that this suit is similar to Kitale ELC No. 136 of 2006, in which a judgment was delivered on 30/9/2020, which has been appealed against. They attached copies of the judgment, notice of appeal, memorandum of appearance and extract from the portal as annexure SKP1-4, respectively.
2. The applicants urge the court to stay the suit to await the outcome of the appeal, which is likely to impact this suit.
3. The respondent opposes the application through a replying affidavit sworn on 11/11/2024, that she is neither a party to the appeal nor was she a party in the suit that gave rise to it, otherwise; the reliefs sought would infringe on her constitutional rights to access justice, fair hearing and the expeditious



- disposal of her suit for the claim of adverse possession, which is independent of the outcome of the appeal.
4. The applicants rely on written submissions dated 25/1/2025. Reliance is placed on *Chege -vs- Gachora Civil Appeal 265 of 2023 [2024] KEHC 5821* and *Christopher Ndolo Mutuku & Another -vs- CFC Stanbic Bank Ltd [2015] eKLR*.
  5. The respondent relies on written submissions dated 18/11/ 2024, citing several authorities on the proposition that judicial time is valuable, stay of proceedings is not a right but a discretionary power, and an applicant must give sufficient cause why it is in the interest of justice to grant the orders sought.
  6. A party seeking a stay of proceedings must satisfy the court that it is in the interest of justice to grant the orders, bearing in mind the need for expeditious disposal of matters, the prima facie merits of the intended appeal, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously. See *RE Global Tours & Travel Ltd HCWC No. 43 of 2000*.
  7. In *Kenya Wildlife Service -vs- James Mutembei [2019] eKLR*, the court observed that a stay of proceedings is a grave judicial action that seriously interferes with the right of a litigant to conduct his litigation, the right of access to justice, right to be heard without delay, and overall, the right to a fair trial. The court said that the test for a stay of proceedings is, therefore, high and stringent. Article 159 (2)(a), (b), (c) and (d) of *the Constitution*, as read together with Sections 1A, 1B, and 3 of the *Civil Procedure Act*, provide that the court must foster and facilitate the expeditious disposal of cases and render justice in a just, expeditious, proportionate and cost affordable manner to the parties.
  8. In *David Morton Silverstein -vs- Atsango Chesoni [2001] eKLR*, the court cited *Kenya Commercial Bank Limited -vs- Benjoh Amalgamated Limited [2017] eKLR*, that it is not the law that a stay of proceedings cannot be granted, but that each case depends on its facts. Again, in *Niazsons (K) Ltd -vs- China Road & Bridge Corporation Kenya [2001] eKLR*, the court said that where an appeal may have profound effects on the entire case so that if the stay of proceedings is not granted, the result of the appeal may as well render the orders made nugatory and render the exercise futile, stay should be granted. It has often been repeated and said that judicial time is the only resource courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice. See *Muchanga Investments Ltd -vs- Safaris Unlimited African Ltd & Others [2009] eKLR*.
  9. According to the applicants, there is a pending appeal arising from another suit whose judgment was delivered on 30/9/2020. The suit before the court was filed on X0/11/2022. It seeks that the plaintiff be declared as the owner of ½ an acre out of LR No. 2XX6/5X1 Kitale Municipality, bought from the 3<sup>rd</sup> respondent in 2005, by virtue of adverse possession, whose title is held by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, out of which the 3<sup>rd</sup> respondent has a beneficial interest.
  - X0. In the replying affidavit to the originating summons dated 25/X0/2023, the 1<sup>st</sup> and 2<sup>nd</sup> respondents confirm that the 3<sup>rd</sup> respondent had filed Kitale ELC No. 136 of 2006 against them, seeking specific performance to complete agreements dated X0/6/2003 and 30/9/2003, and for the transfer of 0.40 Ha out of Kitale Municipality Block X0/3, also known as LR No. 2XX6/5X1, said to be occupied by the 3<sup>rd</sup> respondent. The suit was successful on the part of the 3<sup>rd</sup> respondent, which the 1<sup>st</sup> and 2<sup>nd</sup> respondents have appealed against.
  11. Other than saying that the outcome of the appeal would impact this suit, the nexus between the two suits has not been demonstrated. Specific performance and adverse possession are two different causes of action. The defendants in this suit have not counterclaimed for the land allegedly under the plaintiff's possession, out of permissive entry in 2005. What they have pleaded is that they are not aware of any possession of the land by the plaintiff.



12. The 1<sup>st</sup> and 2<sup>nd</sup> defendants, in their response to the principal originating summons, have not said how the outcome of the appeal would impact the instant suit. The plaintiff in this suit was not a party to the former suit. He is also not currently joined as a party in the appeal.
13. Order 42 Rule 6(1) of the Civil Procedure Rules provides that no appeal or second appeal shall operate as a stay of proceedings unless there is sufficient cause. Sufficient cause must be demonstrated. In Halsbury's Ed Vol. 37, page 330, a stay of proceedings is defined as a serious, grave, and fundamental interruption on the right of a party to conduct his litigation on the basis of the substantive merits of his case. The general rule is that, stay of proceedings should not be imposed unless the proceedings, beyond all reasonable doubt, ought not to be allowed to continue. It is to be granted sparingly and only on exceptional circumstances.
14. The applicants must show that the proceedings are frivolous, vexatious, harassing or manifestly groundless, disclose no known cause of action and are therefore incapable of succeeding on the basis of the facts pleaded. The court has to weigh the pros and cons of granting or not granting the order.
15. In this application, the applicants have not laid any basis, justification and or demonstrated existence of exceptional circumstances for this court to grant a stay of proceedings. I therefore find the application lacking merits. It is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 9<sup>TH</sup> DAY OF JUNE 2025.**

**In the presence of:**

Court Assistant - Laban

Bikundo for the respondents present

Lichuma for 1<sup>st</sup> and 2<sup>nd</sup> defendant/applicants present

Songole for the 3<sup>rd</sup> defendant present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

