



Freedom Limited v National Land Commission & another (Environment and Land Petition E004 of 2023) [2025] KEELC 5054 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5054 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND PETITION E004 OF 2023**

YM ANGIMA, J

JULY 3, 2025

BETWEEN

FREEDOM LIMITED PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND RESPONDENT

RULING

A. The Petitioner's Application

1. The petitioner filed a notice of motion dated 25.03.2025 under Sections 1A, 1B, 3A and 6 of the *Civil Procedure Act*, Order 42 Rule 6 of the *Civil Procedure Rules*, and the inherent jurisdiction of the court and sought a temporary stay of proceedings pending the hearing and determination of *Supreme Court Petition No. E009 of 2024*.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit of Brian Borona, sworn on 25.03.2025. It was deposed that the petitioner was the registered owner of Plot No. MN/V/2857 CR NO. 82003, which is a subdivision of original Plot No. MN/V/287. It was contended that there is a pending appeal before the Supreme Court being Petition No. E009 of 2024 whose outcome may have a bearing on this petition. The petitioner argued that this petition has merit and, as such, should be stayed to avoid prejudice to the petitioner.

B. The 2nd Respondent's response

3. The 2nd respondent opposed the application vide a replying affidavit sworn by Eliud Munene on 02.05.2025. He maintained that the application was fatally defective for failing to disclose that the ownership of the suit property was under contest in the Supreme Court matter. The petition was said to be premature for seeking compensation while concurrently litigating the dispute on the ownership



of the land. The deponent claimed that the petitioner had failed to comply with the court's directions to seek instructions on the withdrawal of the petition and disclose the parallel proceedings related to ownership. It was argued that the petitioner was seeking an unfair advantage before resolving the ownership claims herein at the expense of the 2nd respondent's public project. The court was urged to compel the petitioner to withdraw the petition with costs.

C. Petitioner's reply

4. The petitioner filed a supplementary affidavit sworn by Brian Borona on 09.05.2025 in response to the 2nd respondent's replying affidavit. He deposed that the petitioner had in good faith disclosed the contents of the Supreme Court petition to this court. He maintained that this court had declared the petitioner the owner of Plot No. MN/V/2857 vide a judgment dated 29.08.2023 settling the question of ownership. The deponent further deposed that the urgency in filing this petition was necessitated by the imminent expiry of the limitation period under the *Limitation of Actions Act*. He maintained that had the petitioner not filed the petition by 29.08.2023, its right to seek compensation would have expired. He contended that the respondents would not be prejudiced if the petition is stayed since there were no orders stopping the construction of the highway. The deponent urged the court to find that striking out the petition would be a draconian measure on a suit that raises substantive issues of constitutional and statutory breaches.

D. Directions on Submissions

5. When the application was listed for inter partes hearing, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The petitioner filed its submissions dated 19.05.2025 in support of their application, while the 2nd respondent filed submissions dated 23.05.2025 in opposition to the application.

E. Issues for Determination

6. The court has perused the application, the response thereto, and the material on record and is of the view that the following key issues arise for determination herein:
 - a. Whether the court should stay the proceedings pending the hearing and determination of the *Supreme Court Petition No. E009 of 2024*.
 - b. Who shall bear the costs of the application.

F. Analysis and Determination

a. Whether the court should stay the proceedings pending the hearing and determination of the *Supreme Court Petition No. E009 of 2024*

7. The applicant seeks a stay of these proceedings pending the hearing of the *Supreme Court Petition No. E009 of 2024*. Counsel for the applicant submitted that the petition herein was filed within the limitation period seeking redress for compulsory acquisition of a portion of the suit land by the respondents. The counsel further submitted that during the pendency of the petition a related dispute concerning the same land escalated to the Court of Appeal and subsequently to the Supreme Court *vide* Petition No. E004 of 2024. It was also submitted that the Supreme Court's judgement which shall be delivered on notice will have a significant bearing on this petition hence the need for a stay pending delivery of the said judgement.



8. However, counsel for the 2nd respondent submitted that the application does not demonstrate how the Supreme Court petition directly affects this matter thus making it speculative and unfounded. The counsel argued that the petitioner was pursuing compensation without disclosing the dispute on ownership which amounts to forum shopping and unjust enrichment. The court was urged to dismiss the application with costs and strike out the petition or have the petitioner withdraw it with costs.
9. The material presented to the court by the petitioner, particularly a supporting affidavit in *Supreme Court Petition No. E009 of 2024* points to a dispute relating to Plot No. MN/V/287. The petition before this court refers to Plot No. MN/V/287 as being the original plot number before subdivision, which resulted in Plot No. MN/V/2857. It is therefore clear to the court that there is a correlation between the two petitions. In *Kenya Wildlife Service v James Mutembei* [2019] eKLR it was held that;

“Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously 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 proceeding is high and stringent. See Ringeria J in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000* persuasively stated thus;

“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.”

10. Similarly, in *Lucy Waitthera Kimanga & 2 others v John Waiganjo Gichuri* [2015] KEHC 6120 (KLR) the court held that;

“Are the reasons given sufficient for this court to impose a stay of proceedings? As a general rule, stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

11. Given the circumstances herein, the court is of the view that it would be just and fair for the court not to proceed with the petition until the Supreme Court Petition is determined. The respondents herein may not be parties to the Supreme Court proceedings and may be prejudiced if an unconditional stay of proceedings is granted. The court will therefore grant a one-year conditional stay of proceedings, pending the outcome of the *Supreme Court Petition No. E009 of 2024*.

(b) Who shall bear the costs of the application

12. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA. The court finds that since the respondents are not parties to the Supreme Court petition, they will be prejudiced by the stay of proceedings hence they should be compensated by an award of costs of the application.



G. Conclusion and Disposal Order

13. The upshot of the foregoing is that the court finds and holds that the petitioner's notice of motion dated 25.03.2025 is merited and the same should be allowed. As a consequence, the court makes the following orders for the disposal of the application;
- a. That the proceedings herein are stayed for one year (365 days) pending the determination of the *Supreme Court Petition No. E009 of 2024*.
 - b. The 2nd respondent is hereby awarded costs of the application to be borne by the petitioner.
 - c. The petition shall be mentioned on 24.11.2025 to ascertain the status of the petition before the Supreme Court.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 3RD DAY OF JULY, 2025.

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Y. M. ANGIMA

JUDGE

In the presence

Gillian – Court Assistant

Mr. Borona for the petitioner

Ms. Magdalene Mutheu for the 1st respondent

Mr. Mutua for the 2nd respondent

