



**Knochella v Kanchuel & 3 others; Olalui Group Ranch (Proposed Interested Party)
(Environment & Land Case 2 of 2023) [2024] KEELC 6596 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6596 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 2 OF 2023
CG MBOGO, J
OCTOBER 8, 2024**

BETWEEN

GIDEON S KNOCHELLA PLAINTIFF

AND

THOMAS KANCHUEL 1ST DEFENDANT

SYMON SIATOTI KANCHUEL 2ND DEFENDANT

ALEX TUNAI KANCHUEL 3RD DEFENDANT

KIPALI KANCHUEL 4TH DEFENDANT

AND

OLALUI GROUP RANCH PROPOSED INTERESTED PARTY

RULING

1. Before this court for determination is the notice of motion dated 19th March, 2024 filed by the proposed interested party/ applicant. It is expressed to be brought under Order 51 Rule 1 of the [Civil Procedure Rules](#) and Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), seeking the following orders: -
 1. Spent.
 2. Spent.
 3. That this honourable court be pleased to issue an order of stay of proceedings in Narok ELC 2 of 2023 pending the hearing and determination of the intended appeal in the Court of Appeal.
 4. That costs of this application be in the cause.
2. The application is premised on the grounds on its face. The application is supported by the affidavit of Michael Lekishon Ole Risa, the chairperson of the applicant sworn on even date. The proposed



interested party/ applicant deposed that it is the rightful owner of Narok/Trans-Mara/Olalui/1 which has been fraudulently subdivided into parcels 2-607, and that there is a dispute as to who is the rightful owner of the said property. He deposed that legal proceedings are ongoing, and that the trial court issued orders on the same subject matter that are averse to those given by the appellate court.

3. The proposed interested party/ applicant deposed that the orders are a challenge to the hierarchical supremacy of the courts, and that this court appears to have erred in its finding. He deposed that the plaintiff/ respondent failed to disclose to the court that it had lost in its defence of the application dated 18th December, 2020, and does not deserve equitable orders granted before any court pertaining to the instant suit. The proposed interested party/ applicant further deposed that there is a civil appeal pending before the Court of Appeal, and that they seek this court's act of staying the proceedings in this suit to accord the Court of Appeal the chance to hear and determine its appeal to sustain a fair and just progress of the main suit at the trial court. Further, that the dispute in this suit cannot be substantially adjudicated unless the question of whether it ought to be enjoined as an interested party in the main suit in this court is determined.
4. In conclusion, the proposed interested party/ applicant deposed that they have filed the notice of appeal and they have also requested for typed proceedings. Further, that no party will be prejudiced since the stay is not permanent but it is meant to subsist for the duration of the appeal.
5. The plaintiff/ respondent opposed the application vide his replying affidavit sworn on 11th April, 2024. The plaintiff/ respondent deposed that there are no valid grounds advanced by the proposed interested party/ applicant to warrant the grant of stay of proceedings. Further, he deposed that the contentious issues fall short of an arguable case with a probability of success, and that no irreparable harm will be suffered since the proposed interested party/ applicant is not the registered owner of the suit property.
6. The plaintiff/ respondent deposed that should the court grant stay of proceedings, the same would entail trespass of his property by the defendants, and that it is in the best interest of parties that the application is dismissed.
7. The application was canvassed by way of written submissions. The proposed interested party/ applicant filed its written submissions dated 28th June, 2024 where it raised three issues for determination as follows: -
 - i. What are the conditions for stay of proceedings.
 - ii. Whether the applicant has met the conditions for stay of proceedings.
 - iii. Whether this honourable court should stay proceedings in the main suit.
8. On the first issue, the proposed interested party/ applicant submitted that a notice of appeal is sufficient to bring to the court's attention that there exists an intended appeal, and that the court is not restricted to demand a memorandum of appeal to be filed as a prerequisite. It was also submitted that this court has already adjudicated that the proposed interested party/ applicant should not be joined as a party despite failing to demonstrate any prejudice on the plaintiff/ respondent if the joinder had been granted. While relying on the case of *EG v Attorney General; David Kuria Mbote & 10 others (Interested Parties)* [2021] eKLR, the proposed interested party/ applicant submitted that in the interest of justice, the expeditious disposition of the borne of the subject matter, this court ought to facilitate the appellate court to determine the appeal on its merit.
9. On the second issue, the proposed interested party/ applicant submitted that they intend to rely on the failure to be granted the chance to present and prosecute its case as an arguable and not frivolous reason to appeal. Further, it was submitted that there lies a high chance of likelihood that the proposed



interested party/ applicant will be joined as an interested party by way of setting aside the impugned ruling. The proposed interested party/applicant submitted that in the event the Court of Appeal sets aside the ruling dismissing the application, the proposed interested party/ applicant will suffer irreparable and irreversible harm as the subject matter will have been adjudicated in its absence. To buttress on this submission, the proposed interested party/ applicant relied on the cases of *David Morton Silverstein v Atsango Chesoni* [2002] eKLR, *Stanley Kinyanjui v Tony Ketter & 5 others* [2013] eKLR, and *Gulf Timber & Hardware Supplies Limited v Ngaruiya & 5 others* (Civil Appeal E203 of 2021) [2022 KECA 87 (KLR)].

10. On the third issue, the proposed interested party/ applicant submitted that in consideration of the instant application, the exercise of the discretion granted under the law ought to be exercised judiciously, and in comprehensive consideration of the factors highlighted in this application. Reliance was placed in the cases of *Peter Kariuki Mburu & another v Neema Shab* [2021] eKLR and *Matata & another v Rono & another* (Civil Appeal E034 of 2024) [2024] KEHC 2799 (KLR).
11. The plaintiff/ respondent filed his written submissions dated 17th June, 2024, where he raised one issue for determination which is whether the applicant is deserving of the orders sought.
12. On this issue, the plaintiff/ respondent submitted that the proposed interested party/ applicant has not provided proof that it is the rightful owner of Narok/Trans-Mara/Olalui/1, as well as the orders obtained from the Court of Appeal restraining the defendants/ respondents from dealing with the suit property. While relying on the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR, the plaintiff/respondent submitted that the application is a calculated delay tactic in preventing the timely, economical and proportionate resolution of disputes to ensure the parties access to justice as required by Article 159 of the *Constitution*.
13. The plaintiff/respondent further submitted that the proposed interested party/ applicant has not produced a copy of the memorandum of appeal to assist the court determine whether there is an arguable appeal and for this reason, the proposed interested party/ applicant is wasting the court's time and prolonging the inevitable, as he has not established a prima facie case. He went on to submit that the proposed interested party/ applicant does not have any title to claim ownership of the suit property, and that this application is meant to obstruct or delay the course of justice. The plaintiff/respondent relied on the cases of *Christopher Ndolo Mutuku & another v CFC Stanbic Bank Limited* [2015] eKLR and *Mrao Ltd v First American Bank of Kenya & 2 others* [2003] eKLR.
14. I have considered the application, the replying affidavit and the written submissions as well as the authorities cited by the rival parties. I am of the view that the issue for determination is whether the proposed interested party/ applicant has met the threshold for grant of stay of proceedings in this suit pending the hearing and determination of its intended appeal.
15. The proposed interested party/ applicant being dissatisfied with the ruling of this court delivered on 6th March, 2023 has preferred an appeal against the said ruling of this. The proposed interested party/ applicant has initiated the process by filing a notice of appeal dated 14th March, 2024, and by further requesting for a copy of typed proceedings vide the letter dated 13th March, 2024. In analyzing the same, it can be seen that the instant application has been made without delay.
16. A stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera, J (as he then was) in *Global Tours & Travels Limited* (Nairobi HC Winding Up Cause 43 of 2000).

“ 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 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” (emphasis added).

17. The proposed interested party/applicant submitted that there is need for the appellate court to substantially adjudicate the question of whether it ought to be joined as an interested party so as to sustain a fair and just progress of the main suit in this court. In *Halsbury’s Laws of England*, 4th Edition, Vol. 37 at p. 330 it is stated as follows: -

“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 proceedings, beyond 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 this case.”

18. On whether the memorandum of appeal is arguable and has high chances of success, let me say that in such an application, the proposed interested party /applicant is only required to demonstrate the arguability of its appeal – not the fact that the appeal has a high probability of success. However, this court has not had an opportunity to pronounce itself on whether there is an arguable appeal for the reason that the proposed interested party/ applicant has not supplied the court with a copy of the same. The court cannot therefore comment on the likely chances of appeal and in any case, it is not within the province of this court to determine the likely chances of appeal.
19. It is clear as earlier stated that the application has been brought without delay. However, prima facie, the right to a fair hearing is arguable in this case, for the reason that the interest of both parties must be balanced. Let me add that due regard must be given to time in order to avoid delaying this matter any further. See the case of *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 others* [2009] eKLR, where the Court of Appeal stated that:

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.”

20. In view of the above, and in light of the fact that this court is unable to discern the period within which the intended appeal will be heard and determined vis a vis the interests of the parties as well as the precious judicial time, I find the notice of motion dated 19th March, 2024 lacking in merit. The same is hereby dismissed. Costs in the cause. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 8TH DAY OF OCTOBER, 2024.

HON. MBOGO C.G.

JUDGE



08/10/2024.

In the presence of: -

Mr. Meyoki Pere – C.A

