



**Murithi v Nkoroi (Environment and Land Appeal E022 of 2023)  
[2023] KEELC 17258 (KLR) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17258 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E022 OF 2023**

**CK NZILI, J**

**MAY 3, 2023**

**BETWEEN**

**TIMOTHY MURIUNGI MURITHI ..... APPELLANT**

**AND**

**SAMWEL NKOROI ..... RESPONDENT**

**RULING**

1. When the application dated 22.2.2023 came up for inter-parties hearing on 17.4.2023 learned counsel for the applicant mentioned that there was a consent signed by parties compromising the application. The court directed that the same be filed before the court.
2. The application was stood over for hearing on 25.4.2023, when the respective advocates requested the court to adopt a consent.
3. The terms of the consent are that there be stay of proceedings in Nkubu SPM ELC No. 76 of 2010, pending the hearing and determination of the appeal and secondly, for a stay of execution in the judgment delivered on 14.2.2019 pending the hearing and determination of this appeal.
4. What is appealed against before this court is a ruling delivered on 1.3.2023.
5. The appeal preferred before this court arises out of an order made under Order 12 Rule 2 of the *Civil Procedure Rules*.
6. The effect of the order appealed against was to set aside the judgment delivered on 14.2.2019 and all the consequential orders including an order made on 4.8.2021, so as to give the applicant a right to be heard on merits by the trial court. So what the court is being asked to stay as execution for the hearing of the suit by the trial court.
7. The notice of motion dated 22.3.2023 has no specific prayer for stay of proceedings of the lower court file.



8. To that extent therefore the parties cannot purport to consent to a prayer not included in the application before court.
9. In an application for a stay of execution a party must file the application within a reasonable time, demonstrate substantial loss, offer security for the due realization of the decree and lastly, demonstrate that it is in the interest of justice to grant the orders sought.
10. In this application, the orders sought to be stayed were made on 1.3.2023 while this application was filed on 23.3.2023. The date for the scheduled hearing by the trial court was 26.4.2023. No explanation was offered why the applicant waited for over 20 days to move the court.
11. Secondly, there was no positive order made by the trial court worthy staying. It cannot be true that to set aside the *ex parte* judgment for the matter to be heard on merits, has prejudiced the applicant in the absence of a demonstration of any substantial loss or damage to be occasioned if the matter was heard on merits. There is no indication that the decree has been executed such that if set aside, would deny the applicant an accrued right or defence.
12. As to stay of proceedings courts have held that the same impact negatively on the overall administration of justice and the right to an expedient, proportionate timely and fair dispensation of justice. This was the holding in *Re Global Tours & Travel Limited; Nairobi H.C Winding Up Cause*. 43 of 2000.
13. In this application, the applicant has not met the threshold of either the stay of execution or of proceedings which unfortunately are missing in this motion subject to a fresh hearing cannot amount to substantial loss nor can denial of a right to participate in a suit by a rival party, be termed as prejudicial.
14. The only loss that the applicant is entitled to are costs which the trial court ordered to be in the cause.
15. The upshot is that I reject the consent filed on 18.4.2023 and proceed to dismiss the application dated 22.3.2023 with no order as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU  
THIS 3<sup>RD</sup> DAY OF MAY 2023**

**In presence of**

C.A John Paul

Ouma for the appellant

Mutungu for respondent

**HON. C.K NZILI**

**ELC JUDGE**

