



**Muchalwa v Abdalla & 3 others (Environment & Land Case
131 of 2015) [2023] KEELC 21185 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21185 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 131 OF 2015
EO OBAGA, J
NOVEMBER 2, 2023**

BETWEEN

HENRIETTA W MUCHALWA PLAINTIFF

AND

SIAMA HAMISI ABDALLA 1ST DEFENDANT

SHABAN KIPLAGAT KIPRONO 2ND DEFENDANT

HASSAN KOMEN CHEROP 3RD DEFENDANT

**TRUPHOSA JEPKOSGEI KURGAT ALIAS TRUPHENA JEPKOSGEI
KURGAT 4TH DEFENDANT**

RULING

1. This is a ruling in respect of Notice of Motion dated 3/5/2023 in which the 1st, 2nd and 3rd Defendants/Applicants seek stay of proceedings pending hearing and determination of an appeal they have preferred to the Court of Appeal against the ruling of this court which was delivered on 8/12/2022.
2. The Applicants contend that upon being denied a chance to make further amendments to their defence and counter-claim, they applied for typed proceedings which proceedings were not typed in time. They further contend that their appeal is arguable and that if stay of proceedings is not granted, their appeal will be rendered nugatory.
3. The Applicants argue that it will be in the interest of justice to allow the application for stay of proceedings in order to avoid a situation where they will again move to the Court of Appeal seeking the same orders.
4. The Applicants' application was opposed by the Plaintiff/Respondent and 4th Defendant/Respondent based on grounds of opposition filed on 24/5/2023 and 15/5/2022 respectively. The Respondents contend that the Applicants' application is frivolous, vexatious and an abuse of the process of the court;



has been brought after inordinate delay and offends the provisions of section 1A, 1B and 3A of the Civil Procedure Act as well as Article 50 of the Constitution.

5. The Respondents further contend that the application will greatly prejudice the Plaintiff and the 4th Defendant and that the Applicants have not demonstrated that they are deserving of the court's discretion.
6. The parties agreed to dispose of the application by way of written submissions. The Applicants filed their submissions on 26/6/2023. The Plaintiff/Respondent filed her submissions on 17/7/2023. The 4th Respondent did not file any submissions.
7. I have considered the Applicants' application, the opposition to the same as well as the submissions. The only issue for determination is whether the Applicants have demonstrated that they deserve to have the proceedings stayed.
8. The suit herein was filed on 7/5/2015. On 13/11/2017, the Applicants amended their defence and raised a counter-claim in which they brought in the 4th Defendant. On 5/12/2015, the plaintiff filed a reply to defence and defence to counter-claim. On 29/9/2017, the Applicants in this suit filed originating summons No. 329 of 2017 against the Plaintiff and the 4th Defendant. This suit was consolidated with the present one on 26/9/2018.
9. The Plaintiff testified and closed her case on 6/2/2020. On 14/2/2022 the Applicants filed an application seeking to have the amended defence and counter-claim amended further. This application was disallowed vide ruling dated 8/12/2022. This is what triggered the application for stay of proceedings.
10. Stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation. In the case of Watu Credit -Vs- Geoffrey Mokaya Aboki & another (2022) eKLR, the court quoted the case of Kenya Wildlife Service -Vs- James Mutembei (2019) eKLR where Gikonyo J quoted Halsbury's Laws of England 4th Edition Vol 37 page 330 and 332 where it was 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 proceeding beyond all 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 the case.”

11. In the case of Timothy Kasina Kithokoi -Vs- Elijah Kilele & another (2022) eKLR, the Court quoted the case of Global Tours & Travels Limited, Nairobi HC Winding up cause No. 43 of 2000 where Justice Ringara (as he then was) held as follows: -

“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...”

12. Further in the case of [*Rupa Savings & Credit Co-operation Society –Vs- Violet Shidogo \(2022\)*](#) eKLR the Court stated as follows:-

“The normal rule is for no stay and if a court is to consider a stay, the Applicant has to make out a case by evidence which shows special circumstances for granting one. The mere existence of arguable grounds of appeal is not by itself a good enough reason.”

13. It is in light of the principles set out in the three cases (*Supra*) that I will decide the Applicants’ application. The impugned ruling was delivered on 8/12/2022. The present application was made four months later. The Applicants are contending that the application was not made promptly as they had to wait for typed proceedings. In my view, the applicants were not to wait for typed proceedings before applying for stay of proceedings. The impugned ruling was made available immediately on the same being delivered. The Applicants’ lawyers ought to have gone through it and file an application for stay of proceedings.
14. The Plaintiff/Respondent closed her case on 6/2/2020. The Application to make further amendments was made after two years from the time the Plaintiff closed her case. It is clear that the Applicants were not keen on having this matter concluded. This case has been pending in court for over 8 years. This clearly offends the provisions of section 1A, 1B and 3A of the [*Civil Procedure Act*](#) which requires that disputes should be disposed of expeditiously.
15. The Applicants have not demonstrated that they require discretion of the court in the circumstances. Cases ought to be heard and determined expeditiously. The mere fact that the Applicants have demonstrated that they have an arguable appeal is not enough. It is the circumstances of the case which are to be considered. In the instant case, the Applicants are clearly out to delay the finalization of this case. I therefore decline to stay these proceedings. Consequently, I proceed to dismiss the Applicants application with costs to the Plaintiff and 4th Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 2ND DAY OF NOVEMBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

M/s Salim for Plaintiff/Respondent.

Mr. Wafula for Defendants/Respondents.

Court Assistant –Laban

E. O. OBAGA

JUDGE



2ND NOVEMBER, 2023

