



**Pius & 2 others (Joyce Sule Muriithi t/a Erican Enterprises) v China  
Communication Construction Company & another (Environment & Land  
Case 2 of 2023) [2023] KEELC 21314 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21314 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT & LAND CASE 2 OF 2023  
PM NJOROGE, J  
NOVEMBER 7, 2023**

**BETWEEN**

**KAMAIS PIUS ..... 1<sup>ST</sup> APPLICANT  
GUYO WAKO ..... 2<sup>ND</sup> APPLICANT  
SHINDA BORU ..... 3<sup>RD</sup> APPLICANT  
JOYCE SULE MURIITHI T/A ERICAN ENTERPRISES**

**AND**

**CHINA COMMUNICATION CONSTRUCTION COMPANY .... 1<sup>ST</sup>  
RESPONDENT  
KENYA NATIONAL HIGHWAY AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This application is dated June 29, 2023 and seeks orders;
  1. That this application be certified urgent and be heard *ex-parte* in the first instance.
  2. That this honourable court do order a stay of proceedings in Isiolo CMELC 3 of 2023 – *Tawakul Multi Purpose Cooperative Society Limited vs China Communication Construction Company*, Isiolo CMELC 4 of 2023 – *Hussein Abdi & anor vs China Communication Construction Company* and Isiolo ELC Appeal No E008 of 2023 – *China Communication Company vs Hussein Abdi & Anor* pending the inter partes hearing of this application.
  3. That this honourable court do order the Isiolo ELC 2 of 2023 – *Kamais Pius & 2 others vs China Communication Construction Company & anor*, Isiolo CMELC 3 of 2023- *Tawakul Multi –Purpose Cooperative Society Limited vs China Communication construction Company*



and Isiolo CMELC 4 of 2023 – *Hussein Abdi & Anor vs China Communication Construction Company* be consolidated.

4. That the honourable court be pleased to issue such further orders as it may deem fit in the interests of justice.
5. That the costs of this application be provided for.
2. The application was heard interparties orally on July 6, 2023.
3. The applicant Advocate, Mr Mwiti told the court that all the cited cases involve Plot No 377 Garbatulla. The applicants told the court that he had only received a response from the 3<sup>rd</sup> defendant. He asked the court to allow the application.
4. Miss Nyasani who was holding brief for Mugo Kamau, the plaintiff's advocate told the court the subject matter in the suits mentioned by the applicant are not the same. He reiterated that the plaintiff had not occupied the applicant's land. He told the court that Mr Mwiti had mentioned parcel No 377 whereas the parcel being contested in the lower court is Parcel No. 385.
5. Mr Abdullahi, the 3<sup>rd</sup> defendant's advocate told the court that he opposed the application primarily because hearings in the lower court were at an advanced stage. He told the court that, in the lower court, the parties had consented to have a survey conducted. This was done and a report was filed. The last time the matter came up in the lower court, the applicants requested 21 days to have the matter settled out of court. The time frame given expires on November 13, 2023 after which the parties are to go to court to confirm of or if not a consent had been achieved. He opined that the orders sought are meant to render this order inconsequential and to delay the hearing and conclusion of the suits in the lower court.
6. I have considered the pleadings filed by the parties and the oral submissions made by the parties. I do note that one of the prayers sought is a stay of proceedings in the lower court. I opine that staying of proceedings in a court of law recognized by the Constitution and other laws is a serious matter. A higher court must satisfy itself that there are enough good reasons to grant stay orders.  
  
In this case I do not find adequate reasons to stay the proceedings in the lower court. Such an order will have the effect of delaying the determination of the matters in issue. I also wish to point out that the lower court is not the final court. In whichever way the outcomes in the lower court, go, the parties have recourse to higher courts.
7. In the circumstances, I issue the following order:
  - a. This application is dismissed.
  - b. Costs shall follow the event and are awarded to the Respondents.

**DELIVERED IN OPEN COURT AT ISIOLO THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2023 IN THE PRESENCE OF:**

**HON. JUSTICE P.M NJOROGE**

**JUDGE**

