



**Kenya Wildlife Service v Muriithi (Civil Appeal E010 of 2023)
[2023] KEHC 2491 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2491 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E010 OF 2023
TW CHERERE, J
MARCH 16, 2023**

BETWEEN

KENYA WILDLIFE SERVICE APPELLANT

AND

JULIUS MURIITHI RESPONDENT

RULING

1. On September 16, 2021, Respondent obtained leave to file suit against the Applicant arising from a cause of action that arose on October 8, 2016.
2. At the hearing, the Applicant challenged the leave granted to the Respondent to file suit and by a ruling dated December 6, 2022, the learned trial magistrate sitting in Maua CMCC No E186 OF 2021 overruled the Preliminary Objection.
3. Aggrieved by the ruling, Applicant by notice of motion dated January 18, 2022 supported by an affidavit sworn by Wanjiru T. Christine, advocate for the Applicant, on January 10, 2022 seeks one substantive prayer that court be pleased to grant stay of further proceedings in Maua CMCC No E186 of 2021 pending the hearing and determination of this appeal.
4. Respondent opposed the application by his replying affidavit sworn on February 9, 2023 in which he faults the Applicant for not challenging the order granting him leave to file suit out of time long until the matter was scheduled for defence hearing. He urges that the court finds that Applicant is making an attempt to delay the conclusion of the suit.
5. I have considered the application in the light of affidavits on record. The general principle governing the grant of stay of proceedings was elucidated by Ringera J (as he then was), *In Re: Global Tours and Travels Ltd* NRB HC Winding Up Cause No 43 of 2006 (UR) cited in *Kenya Wildlife Service v James Mutembei* MRU HCCA No 40 of 2018 [2019] eKLR 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.

6. Therefore, the test from the above authorities is one that sets out the following parameters for a courts exercise in discretion in deciding whether or not to grant stay of proceedings as sought in this application;
 - a. Whether the application was filed expeditiously
 - b. Whether the Applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.
7. On whether the application was filed expeditiously, the impugned ruling was delivered on December 6, 2022 and this application was filed timeously on January 18, 2023.
8. As regards sufficient cause, whether or not the court's discretion to grant leave to the Respondent to file suit out of time was exercised judiciously is a triable issue that goes to the merits of the Respondent's claim against the Applicant
9. Respondent does not deny that he filed his claim out of time and as much as stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation, impinges on right of access to justice, right to be heard without delay and overall, right to fair trial, Applicant is entitled to exercise its undoubted right of appeal.
10. From the foregoing, I find that it would be in the interest of justice to grant the orders sought. It is therefore hereby ordered:
 1. This court grants an order of stay of further proceedings in Maua CMCC No E186 of 2021 pending the hearing and determination of this appeal
 2. In order to fast track the appeal, Applicant shall file and serve the record of appeal not later than 30 days from today's date
 3. Mention on July 13, 2023 to confirm compliance and for further orders concerning the hearing of the appeal

DATED IN MERU THIS 16 {{TH}} DAY OF MARCH 2023

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Ms. Wanjiru Christine Advocates

For Respondent - N/A for Michael Ngunjiri & Co. Advocates

