



Kivae Residents Farmers Association (Suing through its Officials Silvester Peter Ndeti, Daniel Kasamba Muia and Benedict Ndunda Nzomo) v Chief Land Registrar & 2 others; Mulwa & 2 others (Interested Parties) (Environmental and Land Originating Summons E018 of 2022) [2025] KEELC 4720 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4720 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ENVIROMENTAL AND LAND ORIGINATING SUMMONS E018 OF 2022

NA MATHEKA, J

JUNE 25, 2025

IN THE MATTER OF THE LAND ACT (ACT NO.6 OF 2012)

AND

IN THE MATTER OF THE LAND REGISTRATION ACT (NO. 3 OF 2012)

AND

IN THE MATTER OF NATIONAL LAND COMMISSION ACT (NO. 5 OF 2012)

BETWEEN

KIVAE RESIDENTS FARMERS ASSOCIATION PLAINTIFF

SUING THROUGH ITS OFFICIALS SILVESTER PETER NDETI, DANIEL KASAMBA MUIA AND BENEDICT NDUNDA NZOMO

AND

THE CHIEF LAND REGISTRAR 1ST DEFENDANT

THE NATIONAL LAND COMMISSION 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

AND

THOMAS MUTAKI MULWA INTERESTED PARTY

LA NYAVU HOMES LIMITED INTERESTED PARTY

JANET NZILANI MULWA INTERESTED PARTY



RULING

1. The application is dated 15th July 2024 and brought under Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B & 3A of the Civil Procedure Act, Article 159 of the Constitution of Kenya 2010 seeking the following orders;
 1. That the Honourable Court be pleased to issue an Order of stay of proceedings in this case pending the hearing and determination of ELC Cause No. 13 of 2017 at the High Court of Kenya at Machakos.
 2. That this Honourable Court do give further Orders that it may deem necessary.
 3. That costs of this Application be provided for.
2. It is supported by the Affidavits of Thomas Mutaki Mulwa and Francis Kissinger Inyangala Mulanda and the following grounds that the Interested Parties/Applicants are the bona fide and legal owner and in possession of the parcel of land known as Mavoko Town Block 3/2310 and Mavoko Town Block 3/2315 and 2316. That the Interested Parties/Applicants together with other Plaintiffs filed ELC No. 13 of 2017 at the High Court of Kenya at Machakos in respect of Mavoko Town Block 3/2310, 2315 and 2316 and others adjoining properties and within the vicinity measuring about 1,288 acres or thereabouts against persons who unlawfully and wrongfully entered and took possession of the said lands. That the said ELC No. 13 of 2017 is partly heard and is scheduled for further hearing on 30th October, 2024 before this Honourable Court. That the properties disputed on ELC 13 of 2017 are the same properties being disputed upon in this case. That the Interested Parties/Applicants will be grossly prejudiced if this matter is allowed to proceed parallel with of ELC No. 13 of 2017 – Machakos. That it is in the interest of justice that the proceedings herein be stayed pending the outcome of ELC No. 13 of 2017 - Machakos.
3. I have carefully considered the instant application, replying affidavit and submissions by the parties. This application is for an order of stay of proceedings in this case pending the hearing and determination of ELC Cause No. 13 of 2017 at the High Court of Kenya at Machakos. Stay of proceedings for whatever reason is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is very strict. In the case of Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 the court stated that;
4. 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”



5. Stay of proceedings has been discussed in the following passages in Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, that;

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."

6. In the instant case the applicant states that Interested Parties/Applicants are the bona fide and legal owner and in possession of the parcel of land known as Mavoko Town Block 3/2310 and Mavoko Town Block 3/2315 and 2316. That the Interested Parties/Applicants together with other Plaintiffs filed ELC No. 13 of 2017 at the High Court of Kenya at Machakos in respect of Mavoko Town Block 3/2310, 2315 and 2316 and others adjoining properties and within the vicinity measuring about 1,288 acres or thereabouts against persons who unlawfully and wrongfully entered and took possession of the said lands. That the said ELC No. 13 of 2017 is partly heard and is scheduled for further hearing on 30th October, 2024 before this Honourable Court. That the properties disputed on ELC 13 of 2017 are the same properties being disputed upon in this case. The respondent states that the subject matter in this suit is different and there is no connection. That the applicants in this application are not parties to this suit and have not applied to be enjoined in this suit.
7. The provisions of Article 159(2)(a)(b)(c) and (d) of the Constitution of Kenya as read with Sections 1A and 1B of the *Civil Procedure Act*, Cap 21 enjoin this court to foster and facilitate the overriding objective of the Act to render justice to parties in all Civil Proceedings in a just, expeditious, proportionate and affordable cost to parties. I have perused the court file in ELC No. 18 of 2022 and find that on the 19th October 2023 the court did grant an order for the applicants to be enjoined as interested parties as per the application dated 7th December 2023. I have also perused ELC No. 13 of 2017 coming for hearing before this court on the 19th June 2025 and find that the parties are similar. The applicants stated that Lukenya Ranching and Farmers Co-operative Society Limited were the registered owners of land known as 8529/4 and 10501/2 which was subdivided and allocated to their members and they claim beneficial interest. That the entire suit land is the one referred to in ELC No. 13 of 2017. I find that the subject matter in the instant suit is similar to the one in ELC No. 13 of 2017
8. It is my considered opinion that it would be in the interest of justice to exercise the court's discretion and grant stay of proceedings as the this matter to avoid conflicting decisions. I find that the application is merited and I grant prayer 1. Costs to be in the cause.
9. It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF JUNE 2025.

N.A. MATHEKA

JUDGE

