



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ethics & Anti-Corruption Commission v Anyega & 4 others (Environment & Land Case 249 of 2018) [2025] KEELC 4571 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4571 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 249 OF 2018**

**SM KIBUNJA, J  
JUNE 18, 2025**

**BETWEEN**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**LYDIA BOSIBORI ANYEGA ..... 1<sup>ST</sup> DEFENDANT**

**COASTAL HIGHLANDS INVESTMENTS LTD ..... 2<sup>ND</sup> DEFENDANT**

**SAID MOHAMED NASSER LAMKI ..... 3<sup>RD</sup> DEFENDANT**

**SAMMY SILAS KOMEN MWAITA ..... 4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The 3<sup>rd</sup> defendant moved the court through the notice of motion dated 2<sup>nd</sup> July 2024 seeking for stay of further proceedings in this suit pending the lodging, hearing and determination of an intended appeal against the ruling of 14<sup>th</sup> February 2024 to the Court of Appeal, and for time for filing of a defence by 3<sup>rd</sup> defendant be suspended pending the lodging, hearing and determination of the said intended appeal. The application is premised on the nine (9) grounds on its face, and supported by the affidavit of Said Mohamed Nasser Lamki, 3<sup>rd</sup> defendant, sworn on the 2<sup>nd</sup> July 2024, deposing inter alia that he was aggrieved by the court's ruling of 14<sup>th</sup> February 2024, dismissing his application dated 11<sup>th</sup> September 2023 that sought for striking out of the suit for being time barred and abated by operation of the law; that he filed a notice of appeal dated 20<sup>th</sup> February 2024, and applied for proceedings that are yet to be provided; that upon dismissal of his earlier application, he was required to file his defence so that the suit could be set down for hearing, which would compromise his right to fair hearing; that the intended appeal challenges the court's jurisdiction and fairness of the trial and it is only fair his prayers be granted.



2. The application is opposed by the plaintiff through the three (3) grounds of opposition dated 16<sup>th</sup> February 2024, inter alia that the issue of defect in or non-service of summons to enter appearance is not an arguable one in view of the actions taken by the 3<sup>rd</sup> defendant; that the 3<sup>rd</sup> defendant merely asserts the suit is time barred without specifications; that the 3<sup>rd</sup> defendant has not shown how he would be prejudiced if stay order was not granted. The learned counsel cited the following superior courts decisions, Yooshin Engineering Corporation versus Aia Architects Limited [2023] KECA 872 (KLR), Diamond Trust Bank Kenya Limited versus Maingi & Another [2023] KECA 712 (KLR), Uchumi Supermarkets Limited & Another versus Sidhi Investments Limited [2018] KECA 263 and Meta Platforms Incorporated & Another versus Samasource Kenya Limited t/a Sama & Others [2023] KECA 999.
3. The court gave directions on filing and exchanging replies and submissions on the 1<sup>st</sup> October 2024. During the mention of 18<sup>th</sup> February 2025, the learned counsel for 4<sup>th</sup> defendant indicated they were not opposed to the application. The learned counsel for the 3<sup>rd</sup> defendant filed their submissions dated the 17<sup>th</sup> February 2025, which the court has considered.
4. The following are the issues for the determinations by the court:
  - a. Whether the 3<sup>rd</sup> defendant has met the threshold for stay of proceedings pending appeal to issue.
  - b. Whether the 3<sup>rd</sup> defendant will be prejudiced if an order suspending the time for his filing his defence is not issued.
  - c. Who pays the costs?
5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, grounds of opposition, submissions by the learned counsel, superior courts decisions cited thereon, the record and come to the following findings:
  - a. The notice of motion by the 3<sup>rd</sup> defendant has invoked sections 1A, 1B, 3 & 3A of the *Civil Procedure Act* and Order 42 Rule 6 of the Civil Procedure Rules. Sections 1A and 1B, otherwise referred to as the Oxygen Principles, restates the overriding objective of the court in civil proceedings under the Act and duty of the court to further the overriding objective respectively. Sections 3 and 3A provides for the special powers and inherent jurisdiction of the court respectively to do justice and prevent the abuse of the court process. Order 42 Rule 1 of the Civil Procedure Rules inter alia provides that:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order.....”
  - b. In their submissions the learned counsel for the 3<sup>rd</sup> defendant has submitted extensively on what the court should consider in an application of this nature, and cited the following superior courts decisions to buttress their position; Imperial Bank Limited [In receivership] & 2 Others versus Alnashir Popat & 17 Others [2017] KEHC 9923 (KLR), Republic versus Japhet Kobia alias Kobia Karwamba & 3 Others [2020] eKLR, Butt versus Rent Restriction Tribunal [1979] eKLR, Attorney General of the Republic of Uganda versus East African Law Society [2013] eKLR, Karuturi Networks Limited & Another versus Daly & Figgis Advocates [2009] eKLR, and Port Florence Community Health Care versus Crown Health



Care Limited [2022] eKLR. The matters that a court should consider in an application for stay of proceedings were set out in the case of Imperial Bank Limited [In receivership] & 2 Others versus Alnashir Popat & 17 Others [supra], to include:

- i. the need for expeditious disposal of cases;
- ii. the prima facie merits of the intended appeal;
- iii. the scarcity and optimum utilization of judicial time; and
- iv. whether the application has been brought expeditiously.

The counsel submitted that the 3<sup>rd</sup> defendant has shown its appeal is arguable, especially on the grounds limitations of actions and abatement of the suit, which goes to the right to fair hearing, which is a jealously guarded constitutional right. That for this court to proceed with the suit will be counter to the overriding objective in civil litigation and the requirement for optimum utilization of the scarce judicial time, in case the appeal succeeds.

- c. I hear counsel to say that there is no need to allow the suit proceed to hearing for reasons that should the 3<sup>rd</sup> defendant succeed on appeal, the likely orders that will issue will result to the proceedings before this court being vitiated, declared null and void. In the case of Attorney General of the Republic of Uganda versus East African Law Society [supra], the First Instance Division of the East African Court of Justice dealt with a similar application and held that:

“... At the end of the day, if their appeal hereat succeeds, the whole proceedings of the lower court will be declared a nullity and be struck out however well conducted it might have been. It is therefore necessary to avoid this undesirable result by ordering a stay of proceedings in the present case pending the determination of the appeal against the trial court jurisdiction.

In the case of Karuturi Networks Limited & Another versus Daly & Figgis Advocates [supra], the Court of Appeal was dealing with an application of stay of taxation and drawing from the overriding objective of civil litigation held that:

“As case managers, we realize that in this country and elsewhere the main scourges of civil justice are cost and delay. Eliminating or reducing cost is now a new statutory requirement imposed on all courts including this court, in the management of all civil matters. As elaborated above, refusing to grant a stay of the taxation would result in extra cost and delay including the filing of yet another appeal to this court arising from the same matter.”

Applying the reasoning in these two superior courts decisions to the instant application, and appreciating that the twin question of whether the suit had abated and or is time barred goes to the court’s jurisdiction to proceed with this suit, and being aware that if the appeal succeeds the proceedings before this court will be a nullity, I find that the 3<sup>rd</sup> defendant has met the threshold for stay of proceedings order to issue pending the hearing and determination of the appeal.

- d. The ruling sought to be stayed was delivered on the 14<sup>th</sup> February 2024, while the instant application dated 2<sup>nd</sup> July 2024 was filed the next day, 3<sup>rd</sup> July 2024. The 3<sup>rd</sup> defendant’s counsel has submitted there was no inordinate delay in filing it. The plaintiff is the only party that filed a reply to the application through their grounds of opposition dated 16<sup>th</sup> February 2025. None of the three grounds addresses the timeliness of the application, and as the plaintiff did



not file submissions, the 3<sup>rd</sup> defendant contention on the matter remains uncontested. Under that circumstance, and appreciating that there is indeed an appeal pending before the Court of Appeal touching on among others questions on the court's jurisdiction, and having already made a finding that the 3<sup>rd</sup> respondent has made out a reasonable case for stay of proceedings to be granted, then I concur there was no inordinate delay in filing the notice of motion.

- e. The timelines and order of filing a statement of defence and other compliance documents is provided for under the Civil Procedure Rules. The closure of pleadings is provided for under Order 2 Rule 13, after which the pre-trial directions and conferences processes under Order 11 kicks in. The impugned ruling of this court which is subject matter of the appeal pending before the Court of Appeal did not pronounce itself or determine anything to do with the 3<sup>rd</sup> defendant's time of filing their defence, and I see no basis of the 3<sup>rd</sup> defendant to ask the court to suspend such time, that is evidently set out under the Rules. That prayer is declined.
- f. Under section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya, costs follow the event unless where for good reasons the court finds otherwise. In this matter, though the 3<sup>rd</sup> defendant has substantially succeeded in their application, I am of the view that it will be fair and just for the costs to abide the outcome of the appeal.
  1. In view of the above determinations on the notice of motion dated the 2<sup>nd</sup> July 2024 by the 3<sup>rd</sup> defendant, the court finds and orders as follows:
    - a. The said application has merit and an order of stay of proceedings in terms of prayer (1) is granted.
    - b. The costs in the application will abide the outcome of the appeal.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 18<sup>TH</sup> DAY OF JUNE 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

IN THE PRESENCE OF:

PLAINTIFF : Mrs Abdulahi for Joram

DEFENDANTS : Mr. Kongere for 3<sup>rd</sup> Defendant

Mr. Rutto for 1<sup>st</sup> and 4<sup>th</sup> Defendants

SHITEMI-COURT ASSISTANT.

S. M. Kibunja, J.

ELC MOMBASA.

