



REPUBLIC OF KENYA



**KENYA LAW**  
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**Makanda v Omusolo (Environment & Land Case 165 of 2006)  
[2025] KEELC 123 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 123 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 165 OF 2006**

**CK NZILI, J**

**JANUARY 22, 2025**

**BETWEEN**

**ALFRED JUMA MAKANDA ..... PLAINTIFF**

**AND**

**ALFRED OCHOKOROD OMUSOLO ..... DEFENDANT**

**RULING**

1. Before the Court is the application dated 15/12/2023 seeking stay of proceedings herein and in particular the application dated 7/12/2023 by the plaintiff in view of Eldoret Civil Appeal No. E015 of 2023. The grounds are set out on the face of the application and a supporting affidavit of Alfred Ochokorod Omusolo sworn on 15/12/2023, that the appeal would be rendered nugatory if execution of the decree proceeds, there are no beacons demarcating the portion of land claimed by the respondent from what belongs to him, survey has not been carried out and the boundary demarcated and that it was in the interest of justice to grant the orders sought, otherwise he will suffer substantial loss if eviction and demolition occurs.
2. The applicant relies on written submissions dated 6/6/2024.
3. Reliance was placed on Joachim Ngugi -vs- G.Z. Ulyate & 6 Others [2014 Nairobi HCCC No. 1029 of 1982 and RWW -vs- EKW [2019] eKLR. Though the defendant/respondent was given time to file a response, none has been filed.
4. The discretion to stay proceedings is an equitable one exercised on sound grounds for it impedes on the right to fair hearing, access to justice and the constitutional mandate of courts to expedite hearing and disposal of suits. Stay of proceedings is different from stay of execution. It can only be granted in exceptional circumstances and not as a matter of right. It is a serious, grave and fundamental interruption of the right of parties to conduct their litigation on merits. It can only be imposed sparingly and only where the proceedings are shown to be frivolous, vexatious, groundless or raising



no cause of action in law or equity. The applicant must demonstrate that the plaintiff probably might not and will not succeed.

5. In *William Odhiambo Ramogi & Others -vs- A.G. & 6 Others, Muslim for Human Rights and Others (IP)* [2020] eKLR the court reviewed the case law of *Kenya Shell Ltd -vs- Baufan Kibiru Karuga Another* [1986] eKLR, *David Morton Silvestein -vs- Atsango Chesoni* [2002] eKLR and that held must be a preexisting appeal, in a higher court, an explanation why the stay has not been sought in the higher court, there must be demonstration that the appeal has arguable points and would be rendered nugatory absence of stay, and that there are exceptional circumstances to warrant stay as opposed to having the case concluded and all arising grievances taken up in a single appeal. Lastly, the applicant must demonstrate that the application was filed expeditiously.
6. The decree before this court was issued on 7/7/2022. A certificate of delay was issued on 20/7/2022. A notice of appeal was filed on 2/6/2020 after the judgment was delivered on 21/5/2020. This application was filed on 15/12/2023. No explanation has been offered for the delay of close to three years since delivery of the judgment.
7. Though there is no law on maximum or minimum delay, it all depends on the circumstances of each case for even a one day delay may be fatal or prejudicial.
8. The applicant has not told the court if the execution has occurred and what action he has taken to comply with the decree or offer security for the same.
9. What is before the court is not stay of execution but stay of proceedings. Why the applicant has not prayed for stay of execution remains unclear. The circumstances are not the same, though they might cross paths while dealing on stay of proceeding or stay of execution.
10. It is not enough to allege substantial or irreparable damage without substantiating it. The court has to balance the two competing rights of the parties and put them on a scale on the likely hardships each will suffer. The applicant has not told this court how his appeal would be rendered nugatory especially in an application of stay of proceedings, where the threshold is higher as held in *KWS -vs- James Mutembei* [2019] eKLR, for it impedes the right to fair hearing without inordinate delay.
11. In *Karsan Ramji & Son Ltd -vs- Athuman & Another* [2024] KECA 563 [KLR] (24<sup>th</sup> May, 2024) (Ruling). Applying the foregoing and principles I find the application lacking merits. It is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED AT KITALE THIS 22<sup>ND</sup> DAY OF JANUARY, 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

