



**Choge (Suing as an Administrator of the Estate of Simeon Kiptum
Choge - Deceased) v Mehta; Sawe & 2 others (Interested Parties) (Land
Case E008 of 2024) [2025] KEELC 4445 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4445 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
LAND CASE E008 OF 2024**

**E ASATI, J
JUNE 12, 2025**

BETWEEN

**CHRISTIAN CHOGE (SUING AS AN ADMINISTRATOR OF THE ESTATE OF
SIMEON KIPTUM CHOGE - DECEASED) PLAINTIFF**

AND

GAURI MEHTA DEFENDANT

AND

EGLYNE CHECHIRCHIR SAWE INTERESTED PARTY

MIRIAM ARUM CHOGE INTERESTED PARTY

JOSEPH ANG'ANG'A INTERESTED PARTY

RULING

1. The application coming up for ruling is dated 31st January 2025 expressed to be brought pursuant to the provisions of Section 1A, 3 and 3A and 63(3) of the *Civil Procedure Act*. It seeks for an order that there be stay of the proceedings herein pending the hearing and determination of an intended appeal against the judgement of Chemitei J arising from KTL HCSC No. 259 of 2014 in Re: Estate of the late Simeon Kiptum Choge(Deceased).
2. The application brought by the 2nd and 3rd Interested parties was based on the grounds that there exists a valid lease agreement between the 2nd and 3rd Interested Parties and the Defendant, that following the judgement by Justice Chemitei in the Succession Cause wherein the suit property was subjected to distribution, an appeal has since been lodged to the Court of Appeal, that the outcome of the appeal will inevitably have a bearing on this suit as to whether the defendant should be evicted from or continue to stay on the suit land and that there is therefore need for the proceedings herein to be stayed pending the outcome of the appeal.



3. The application was supported by the Supporting Affidavit of Miriam Arum Choge sworn on 31st January 2025. To the Supporting Affidavit was annexed Lease Agreement dated 7th November 2013 for 10 years from 1st day of January 2014, Judgement by Justice Chemitei and Notice of Appeal lodged with the Deputy Registrar in Kitale H.C Succ. No. 259 of 2014 on 11th May 2022.

The application was not opposed.

4. Although the grounds for grant of an order of stay of proceedings are stringent as was held in the case of Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 that: -

“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. And in Kenya Wildlife Service Vs James Mutembei (2019) eKLR, Gikonyo J held that:

Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings 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 high and stringent”.

6. In the present case the reason given for seeking stay of proceedings is that there is an appeal to the Court of Appeal whose decision will inevitably have a bearing on the suit. So that to proceed with hearing of the suit and make orders which may thereafter be rendered void by the outcome of the appeal will be a futile exercise and an imprudent use of judicial time and resources.
7. I find that the application which is unopposed is merited and hereby allow it. The proceedings herein are stayed pending hearing and determination of the appeal to the Court of Appeal arising from KTL HCSC NO. 259 OF 2014: RE: ESTATE OF THE LATE SIMEON KIPTUM CHOGE, DECEASED. No order as to costs.
8. This matter will be mentioned on 18/9/2025 to confirm the position of the appeal.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 12TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

**E. ASATI,
JUDGE.**

In the presence of:

Ajevi: Court Assistant.

Kituyi h/b for Bosek for the Plaintiff/Respondent.



Okello for the Defendant.

Odongo for the 2nd & 3rd Interested Parties/Applicants.

