



**Kabbis v Luande (Sued as a Legal Representative of Sipora Taaka Luande) (Environment and Land Appeal E010 of 2025) [2025] KEELC 6176 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6176 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND APPEAL E010 OF 2025  
BN OLAO, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**GEORGE WESONGA KABBIS ..... APPELLANT**

**AND**

**JAMES EGESA LUANDE (SUED AS A LEGAL REPRESENTATIVE OF SIPORA  
TAAKA LUANDE) ..... RESPONDENT**

**RULING**

1. George Wesonga Kabbis (the Appellant) has moved this Court vide his Notice of Motion dated 24<sup>th</sup> June 2025 and filed under Certificate of urgency. He seeks the following orders:
  1. Spent
  2. Spent
  3. That this Honourable Court be pleased to stay proceedings in Port Victoria ELC Case No E008 of 2024 pending the hearing and determination of this appeal.
  4. That costs of this application be provided.
2. The Motion is premised on the grounds set out therein and supported by the Appellant's affidavit of even date.
3. The gravamen of the Motion is that when Port Victoria ELC Case NO E008 of 2024 came up for hearing before Hon Anne Karimi Senior Resident Magistrate at Port Victoria Court, the Appellant's counsel Mr Ashioya was not in Court and had tried to log in albeit unsuccessfully. The Court advised him to get in touch with his counsel who assured him that he was trying to log in. However, when he returned to the Court, he found the Respondent walking out of the witness box and the Court pronouncing the date for submissions.



4. His counsel filed an application to set aside the *ex parte* proceedings so that the trial could commence *de novo* to allow him canvas his counter-claim. That application was dismissed by the trial Court on the basis that there was no evidence to show that the virtual platform had technological hitches. That it is a travesty of justice for the trial Court to deny him the opportunity to re-open the case which is only one year old. He is ready to pay thrown away costs of Kshs.5,000. He has therefore filed in this Court ELC Appeal No E010 of 2025 and seeks the orders herein pending the hearing and determination of the appeal. Annexed to the Motion is the memorandum of appeal dated 11<sup>th</sup> June 2025 against the ruling of the trial magistrate dated 5<sup>th</sup> June 2025 dismissing his application.
5. In opposing the Motion, the Respondent filed a replying affidavit dated 1<sup>st</sup> July 2025 in which he has deposed, *inter alia*, that the Respondent remains in illegal possession of the suit land and is therefore delaying this suit to enable him continue drawing rent as the case drags on in Court. That by 17<sup>th</sup> December 2024, the Appellant had not filed his statements and on the date of hearing, the Appellant was present in Court but his counsel was absent and his phones were switched off. The Court directed that the trial proceeds and the Appellant walked out of Court without telling the Court about the inability of his counsel to log in. Therefore, there is no explanation as to why the Appellant's counsel was unable to log in and the excuse about technical issues is belated. The Appellant's counsel has offered no explanation for the delay in filing this application. The delay is unexplained and inexcusable.
6. That this application amounts to re-opening the application which was in the lower Court and arguing his appeal prematurely. The proceedings in the lower Court did not proceed *ex parte* to warrant this application and no prejudice will be suffered by the Appellant if the trial Court is allowed to deliver its judgment as he has not invested any money in the suit property and his application in the trial Court was properly dismissed.
7. This Motion lacks merit and should be dismissed.
8. The Motion was first placed before Nyukuri, J on 26<sup>th</sup> June 2025 who directed that it be canvassed by way of written submissions and granted *ex parte* orders.
9. The submission have been filed by Mr Ashioya instructed by the firm of Ashioya & Company Advocates for the Appellant and by Mr Wanyama instructed by the firm of Wanyama & Company Advocates for the Respondent.
10. I have considered the Motion, the rival affidavits and submissions by counsel.
11. What this Court needs to determine is whether the Appellant has made out a case for an order of stay of proceedings in Port Victoria ELC case NO E008 of 2024 pending the hearing and determination of this appeal. Addressing this issue in the case of Global Tours & Travels Ltd Nbi Winding Up Case No 43 Of 2000 Ringera J (as he then was) stated thus:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or under 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 orders. 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 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.” Emphasis mine.

That decision was upheld on appeal in the case of Global Tours & Travels Ltd -v- Five Continents Travels Ltd 2015 Keca 789 Klr [c.a Civil Appeal No 327 Of 2003 Nairobi]. It Was Also Adopted By The Same Court In The Case Of Justice Lucy Njoki Waithaka -v- Tribunal To Investigate The Conduct Of Hon Lady Justice Lucy Njoki Waithaka & Jsc & Kmja (as Interested Party) C.a. Civil Application No 8 of 2020 [2020 KECA 571 KLR].

12. Further, the threshold for an order of stay of proceedings was set out in the following passages in Halsbury’s Laws Of England 4<sup>th</sup> Edition Vol 37 pages 330 and 332:

“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 substantive merits of his case and therefore the Court’s general practice is that a stay of proceedings 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 case.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The Applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of pleadings and in the fact of the case.”

13. It is clear therefore that the power to order a stay of proceedings is a grave and fundamental interruption of a party’s right to conduct his trial but must be exercised at the discretion of the Court in the interest of justice. Each case must be considered on the basis of it’s own peculiar circumstances.
14. In this case, the Appellant was in Court during the hearing but his counsel who had opted to attend virtually had challenges trying to log in. The Appellant even tried to call him but by the time he returned to the Court, the Respondent had testified and closed his case. An application to re-open the case was declined by the trial Court vide a ruling dated 5<sup>th</sup> June 2025 culminating in the filing of this appeal. Issues of technological challenges are not new in Busia more so with the frequent power outages. Indeed in my Court, I always caution counsel and litigants that when they opt to appear before me virtually, they do so at their own risk. The Appellant was in Court which is a manifestation of his interest in defending the case against him and also prosecuting his counter-claim. To deny him that opportunity in the circumstances obtaining herein will amount to a travesty of justice.
15. I also take note of the fact that there has been no inordinate delay in filing and prosecuting this application. The ruling sought to be stayed was delivered on 5<sup>th</sup> June 2025 and this application was filed on 24<sup>th</sup> June 2025. I do not consider that delay to be inordinate.
16. The case in the subordinate Court is not old. The suit was filed on 19<sup>th</sup> June 2024 as is clear from the trial magistrate’s ruling dated 5<sup>th</sup> June 2025. The proceedings complained of were conducted on 25<sup>th</sup> February 2025 barely eight (8) months later. While the Judiciary under Article 159 (2) (b) is enshrined to serve justice without delay, I do not consider that there has been any inordinate delay in this matter.



17. I am also guided by the wise words of Sheridan J In The Ugandan Case Of Sebei District Administration -v- Gasyali 1968 E.A 360 in which he adopted the words of Ainley J In The Case Of Jamnadas Sodha -v- Gordandas Hemraj 1952 7 ULR 7 where the Judge said:

“The nature of the action should be considered, the defence if one has been brought to the notice of the Court, however irregularly, should be considered, the question as to whether the plaintiff can reasonably be compensated by costs for any delay occasioned should be considered, and finally, I think it should always be remembered that to deny the subject a hearing should be last resort of a Court.” Emphasis mine.

18. That decision has been adopted by the Court of Appeal in the case of Pithon Waweru Maina -v- Thuka Mugiria 1983 Keca 75 Klr [c.a. Civil Appeal No 27 of 1982] in cases of setting aside ex parte judgments. This case is not about setting aside any ex parte orders but I am persuaded that the principles set out therein must apply with equal force in a case such as this where the Appellant is craving this Court to allow re-open the suit in the lower Court so that he can not only defend the suit against him but also to prosecute his counter-claim. The Court should not close the door of justice against him by declining the order of stay of proceedings in the subordinate Court. I am of course live to the fact that what is before me now is an application to stay those proceedings and not the substantive appeal against the trial Court’s ruling and which appeal is yet to be canvassed. But it is clear that if the proceedings are not stayed, the appeal may be rendered nugatory.

19. The up-shot of all the above is that this Court makes the following disposal orders with respect to the Notice of Motion dated 24<sup>th</sup> June 2025:

1. The Motion is allowed.
2. The Applicant shall within 7 days of this ruling pay to the Respondent thrown away costs assessed at Kshs.10,000 and in default, execution to issue.

**RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**BOAZ N. OLAO**

**JUDGE**

**24<sup>TH</sup> SEPTEMBER 2025**

