



**Rong’o v Mutua & another (Environment and Land Appeal
E028 of 2025) [2025] KEELC 6456 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6456 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E028 OF 2025
MD MWANGI, J
SEPTEMBER 25, 2025**

BETWEEN

MARY NYAMUNGU RONG’O APPELLANT

AND

JULIE KIENDE MUTUA 1ST RESPONDENT

COUNTY GOVERNMENT OF KAJIADO 2ND RESPONDENT

RULING

(Ruling in respect of the Notice of Motion Application dated 20th May 2025 seeking a stay of proceedings pending appeal pursuant to Order 42 Rule 6 of the Civil Procedure Rules)

Introduction

1. Before this Court for determination is the Notice of Motion application dated 17th May 2025 brought by the Appellant/Applicant, Mary Nyamungu Rongo, pursuant to the provisions of Order 42 Rule 6 of the Civil Procedure Rules.
2. The Appellant/Applicant seeks inter alia the following substantive orders:
 - a. That this Honourable Court be pleased to issue a temporary order of stay of proceedings in Ngong MCELC No. E005 of 2021 pending the hearing and determination of the appeal herein.
 - b. That the costs of this application be borne by the Respondents.
3. The application is premised on the grounds set out on its face thereof and in the sworn affidavit of the Appellant/Applicant, Mary Nyamungu Rongo, who deposes that she was denied an opportunity to testify before the trial court on account of circumstances beyond her control i.e. the mechanical breakdown of her vehicle. It is contended that her subsequent application to reopen the case and



tender evidence was dismissed on 24th April 2025, thereby effectively locking her out of the trial. The Appellant/Applicant, who describes herself as an elderly and ailing litigant, argues that unless the orders sought are granted, she risks being condemned unheard, contrary to the dictates of Article 50 of *the Constitution* of Kenya, 2010 on the right to a fair hearing.

4. The Applicant maintains that the underlying appeal has been lodged within time, that no prejudice will be suffered by the Respondents if the stay orders are granted, and that it is in the interest of justice that the appellate court intervenes to guarantee her right to a fair hearing.
5. The Application is opposed by the 1st Respondent, Julie Kiende Mutua, who filed a replying affidavit in which she contends that the Applicant has not demonstrated sufficient cause to warrant the orders sought. She avers that the Applicant has persistently failed to prosecute her case despite being granted several adjournments by the trial court. She has listed various hearing dates between February 2023 and September 2024 when the Applicant either failed to attend court or sought adjournments. According to the 1st Respondent, the Applicant's explanation regarding mechanical breakdown is unsubstantiated, as no proof has been furnished, and even if true, alternative means of transport were readily available.
6. The 1st Respondent further avers that the application to reopen the case in the trial court was filed over three months after the case was marked as closed, and thus the delay was inordinate and unexplained. She also points out that the issue of a site visit was conclusively dealt with by the Lower court's ruling of 3rd November 2022, following a survey report filed by the County Surveyor, and that the Applicant never appealed against that decision.
7. It is the 1st Respondent's position that the present application is a delaying tactic and an abuse of the court process, aimed at frustrating the expeditious disposal of the matter. She deposes that she too is advanced in age, has suffered emotional and financial strain due to repeated adjournments, and that no prejudice will be occasioned to the Applicant since the next date before the trial court is a mention and not a hearing. The 1st Respondent therefore prays that the application be dismissed with costs.
8. The 2nd Respondent did not file a reply to the Plaintiff's application; she instead associated with the 1st Respondent's response.

Directions

9. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the submissions filed and the same have been considered in the writing of this ruling.

Analysis and Determination

10. Order 42 rule 6 of the Civil Procedure Rules is the starting point for any stay pending appeal. Sub-rule (1) provides, verbatim, 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, and whether or not there shall be an appeal pending such security as the court may order for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”



11. It is important to state that a prayer to stay proceedings (as opposed to stay of execution) invokes a more exacting, sparingly exercised discretion grounded in the court’s inherent jurisdiction. The classic formulation remains in *Re Global Tours & Travel Ltd*, HC Winding Up Cause No. 43 of 2000, where the Court (Ringera J, as he then was) stated 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.”

12. Courts have repeatedly cautioned that grant of an order of stay of proceedings is an exceptional remedy. In *Kenya Wildlife Service v James Mutembei* [2019] eKLR, the court underscored that:

“... Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay and overall, the right to fair trial. Therefore the test for stay of proceedings is high and stringent.”

13. In *Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi* [2014] eKLR, the court summarized the operative principles as follows:

“... the court’s discretion in deciding whether or not to grant stay of proceedings ... must be guided by ... (i) whether the applicant has established that he/she has a prima facie arguable case; (ii) whether the application was filed expeditiously; and (iii) whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.”

14. The intended appeal challenges the trial court’s refusal to reopen the Plaintiff’s case after it was marked closed on 5 September 2024, in circumstances the Applicant attributes to a motor-vehicle breakdown, her age and consequently her health. A prima facie arguable case is never equated with a likely winner; it is simply one that merits consideration.

15. On the material presented, there is an appealable controversy about the strictness of the trial court’s order. However, the Respondent’s chronicle of adjournments, dilutes the veracity of the complaint and situates the impugned order as a consequence of delay tactics. Whereas the appeal cannot be said to be frivolous, it does not justify stay of the said proceedings before the trial court pending the hearing of the appeal before this court.

16. The stay being asked for would only cause further delay in a case filed way back in the 2021, which has already dragged on as a result of several adjournments. The Respondent has even listed dates when the matter was stalled at the instance of the Plaintiff. Importantly, the next court date is only for a mention, not a hearing, which means there is no prejudice to the Applicant if the proceedings continue for now. As the Court said in *Kenya Wildlife Service v Mutembei* (Supra), the test for stopping live proceedings is “high and stringent.” On the facts presented before this court, the need for expeditious resolution



of cases, and proper use of judicial time (as emphasized in Global Tours) all weigh against granting an order of stay of proceedings.

17. The court finds that the Applicant has not met the requirements for a grant of stay of proceedings. Accordingly this application is hereby dismissed with costs to be borne by the Applicant.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Nyachia h/b for Mr. Ngugi for the Respondents

Mr. Oirere h/b for Mr. Nyabuto for the Appellant

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

