



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ethics & Anti-Corruption Commission v Kiptoo & 3 others (Environment and Land Case E009 of 2025) [2025] KEELC 6969 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6969 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E009 OF 2025**

**CK NZILI, J**

**OCTOBER 15, 2025**

**BETWEEN**

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

**AND**

**KEN KIPTOO ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPHINE KERUBO ALIAS J. KERUBO ..... 2<sup>ND</sup> DEFENDANT**

**EDWIN KIPCHIRCHIR TUM (BEING SUED AS THE ADMINISTRATOR OF  
THE ESTATE OF NATHANIEL KIPKORIR TUM) ..... 3<sup>RD</sup> DEFENDANT**

**WILSON GACANJA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Through an application dated 23/7/2025, the 3<sup>rd</sup> defendant seeks a stay of proceedings pending hearing and determination of their intended appeal against a ruling of this court granting orders of temporary injunction issued on 25/6/2025. Further, the court is asked to suspend the aforesaid orders until the appeal is heard and determined.
2. The reasons are contained on the face of the application and in a supporting affidavit sworn by Edwin Kipchirchir Tum on 23/7/2025. It is deposed that the Court of Appeal decision will have a direct impact or effect on this matter, the complaint being whether this court is granting the injunction, made certain definitive or conclusive findings at the interlocutory stage. Likely to influence its determination of the substantive suit.
3. The applicant deposes that he stands to suffer loss if the hearing of the matter proceeds before this court and it pronounces itself on the weighty legal issues raised in the appeal.



4. The deponent deposes that the estate of the deceased will be prejudiced should the matter proceed to conclusion, as the beneficiaries risk eviction from the land that they have occupied for over 30 years, contrary to Article 40 of the [Constitution](#).
5. The applicant deposes that the orders sought will prevent the appeal from being rendered nugatory and an eviction being issued against the estate; otherwise, the interest of justice and the spirit of Articles 50 and 159 of the [Constitution](#) require the orders sought to be granted. The applicant deposes that the application is made timeously and in good faith.
6. The application is opposed by the plaintiff's written submissions dated 16/9/2025, following the finding that the replying affidavit of Leonard Mungai, sworn on 27/8/2025, was filed out of time and without leave of the court.
7. The plaintiff submits that the temporary order issued is to last for one year, and it is to preserve the suit property from dissipation until the suit is heard and determined on the merits.
8. Regarding the grounds on stay of proceedings under Order 42 Rule 6 of the [Civil Procedure Rules](#) as read together with Section 6 of the [Civil Procedure Act](#), the plaintiff submits that the same is a discretionary power to be exercised cautiously, sparingly and exceptionally and judiciously, by a court based on sufficient grounds, otherwise it has a potential of curtailing a litigant's right to fair trial, otherwise justice delayed is justice denied. Reliance is placed on [Halsbury's Law of England](#) 4<sup>th</sup> Edition, Vol. 37, pages 330 and 332, [William Ramogi & Others -vs- Attorney General & Others](#) [2019] eKLR and [Re Global Tours & Travel Nairobi HC Winding Up Cause No. 43 of 2002](#).
9. The plaintiff submits that from the cited caselaw, the application herein has failed the tests since:
  - (1) Other than notice of appeal, no reason has been given why no appeal has been lodged.
  - (2) The Court of Appeal is the best forum to ventilate the application; otherwise, this court has no control over the Court of Appeal diary.
  - (3) Holding the file in abeyance is not good for the applicant may never file the appeal.
  - (4) The grounds of appeal are frivolous since the main question in the plaint as to whether the suit property is public property has not been determined, and the ruling is not a final and substantive issue.
  - (5) There was no order of eviction sought or issues in the ruling.
10. Further, the plaintiff submits that the appeal will not be rendered nugatory otherwise, as held in [Stanley Kangethe Kinyanjui -vs- Tony Keter & Others](#) [2013] eKLR, whether or not an appeal will be rendered nugatory depends on whether there is a stay, whatever is allowed to happen is reversible, or if not, damages will be reasonably compensated to the party aggrieved.
11. The plaintiff submits that the appeal relates to interim orders, and if it succeeds, the Court of Appeal will reverse the injunction currently registered against the suit property, hence no loss will be occasioned or suffered in the intervention period before the Court of Appeal arrives at the decision.
12. Equally, the plaintiff submits that even if the orders are reversed, when the matter proceeds for a hearing, the doctrine of lis pendens automatically applies. Reliance is placed on [Marete -vs- Ndegwa & Others](#) [2024] KECA 543 KRL (24<sup>th</sup> May 2024) (Judgment).



13. The plaintiff submits that no exceptional circumstances exist to warrant the issuance of the stay orders, and none have been pleaded by the applicant; otherwise, the fear of eviction is an apprehension with no legal basis.
14. The plaintiff submits that no loss or prejudice will be suffered if stay orders are not granted; otherwise, as held in *Constantinous Wambu Migwi -vs- Gichugu Water & Sanitation Trust & Another* Misc. Appl. No. 58 of 2013, the applicant has failed to prove such considerable loss he may suffer.
15. The plaintiff submits that it is not in the public interest to stay the proceedings; otherwise, it will lead to inordinate delay of the hearing, yet recovery of public property is a matter of public interest, requiring expeditious disposal of such a case. Reliance is placed on Section 1A(1) of the *Civil Procedure Act*, Article 159(2)(b) of the *Constitution*, *Peter Gatirau Munya -vs- Dickson Mwenda Kitbinji & Others* [2014] eKLR, and *Ethics and Anti-Corruption Commission -vs- Nesco Services Ltd & Others* [2025] KEELC 3738 [KLR] (8<sup>th</sup> May 2025) (Ruling).
16. Stay of proceedings, as indicated in *Halsbury's Law of England* (supra), is a serious, grave, and fundamental interruption on the right of a party who is entitled to expeditious disposal of a matter. In *Global Tours & Travels Ltd* NRB High Court Winding Up Cause No. 43 of 2000, the court observed that the discretion on whether or not to stay proceedings must be determined based on the interest of justice, the need for expeditious disposal of the suit, the prima facie merits of the intended appeal, scarcity, and optimum use of judicial time.
17. In *William Odhiambo Ramogi -vs- Attorney General & Others* [2019] eKLR, a five-judge bench observed that an applicant has to demonstrate exceptional circumstances making the stay of proceedings warranted.
18. In *Kenya Wildlife Service -vs- Jane Mutembei* [2019] KEHC 10478 [KLR], the court observed that stay of proceedings should not be confused with stay of execution pending appeal, given the former is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation, it impinges on the right to access justice, the right to be heard without delay and on the right to fair trial.
19. In this application, the burden is on the applicant to demonstrate exceptional circumstances to warrant a stay of proceedings of the suit, which, as rightly submitted by the plaintiff, touches on public interest regarding the recovery of alleged public property. What amounts to exceptional circumstances must be determined by looking at the personal circumstances of the applicant, the case, and its facts. Exceptional circumstances, as defined in *Black's Law Dictionary*, 9<sup>th</sup> Edition, mean unusual, special, out of the ordinary, rare, or outside reasonable anticipation.
20. The applicant must show that the refusal of the application for a stay of proceedings will definitely result in unjustifiably harsh consequences. Proceedings are defined under *Black's Law Dictionary*, 9<sup>th</sup> Edition, as a regular and orderly progression of a lawsuit.
21. In *Ferdinand Waititu -vs- Independent Electoral and Boundaries Commission & Others* [2013] eKLR, the court said that a stay of proceedings is a tool used by one party to suspend proceedings to await the action of one of them in regard to some step or act. Article 50 of the *Constitution* guarantees every person the right to a fair trial, which includes the right to begin and conclude the trial without unreasonable delay; otherwise, justice delayed is justice denied.
22. The applicant wants to curtail the rights of fair trial in favour of the plaintiff, on the basis that there is a pending appeal on an interlocutory application ruling of this court, which, if the hearing of the suit proceeds, will be rendered nugatory. The burden is on the applicant to demonstrate how the appeal will be rendered nugatory if the suit is heard on merits.



23. Nugatory, as held in *David Morton Silverstein -vs- Atsango Chesoni*, Nairobi Civil Appl. No. 189 of 2001, means worthless, futile, or invalid. The order issued by this court was interim in nature and is to last for one year. Constitutional rights can only be curtailed under the exceptions in Article 24 of the *Constitution*. Justice delayed is justice denied. The right to deny a party a fair hearing and access to justice can only be justified as per the exceptions in Article 24 of the *Constitution*.
24. As to the suspension of the temporary orders, the basis for seeking such orders has not been laid. Such prayers must meet the conditions set out under Order 42 Rule 6 of the *Civil Procedure Rules*. Substantial loss and security for the due realization of the decree should the appeal not succeed, have not been addressed, let alone substantiated. A stay of proceedings should not be viewed as a stay of execution. Both depend on different parameters. The court is functus officio on the issue. Stay or suspension cannot be issued, especially when the said orders, as submitted by the respondent orders have already been acted upon and are also subject to the pending appeal.
25. The upshot is I find no merit in the application dated 23/7/2025. It is hereby dismissed with costs.
26. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 15<sup>TH</sup> DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant – Dennis

Miss Githinji for the Plaintiff – present

Ogoti for Oduor for 3<sup>rd</sup> Defendant – present

1<sup>st</sup> Defendant – absent

2<sup>nd</sup> Defendant – absent

4<sup>th</sup> Defendant – present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

