



Karuingi & another v Wainaina (Environment and Land Appeal E015 of 2024) [2025] KEELC 6769 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6769 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E015 OF 2024
MAO ODENY, J
OCTOBER 8, 2025**

BETWEEN

MUTURI KARUINGI 1ST APPELLANT

ESTHER WAHU KIBE 2ND APPELLANT

AND

PAUL KURIA WAINAINA RESPONDENT

RULING

1. This ruling is in respect of the Appellants’ Notice of Motion application dated 9th June, 2025, seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the intended Appeal against the Respondents herein this Honourable Court be pleased stay proceedings in Nakuru CMELC 77 of 2020; Prof Paul Kuria Wainaina vs Muturi Karuingi & Esther Wahu Kibe as directed by the trial court in the ruling delivered on 22nd May, 2025 with hearing scheduled for 19th June, 2025.
 - d. That this honorable court does make an order as to costs to be borne by the Respondent.
2. The application is supported by the annexed affidavit of Karungu Peninah, the Appellants’ counsel, sworn on 9th June, 2025, who deponed that Hon Ndege delivered a ruling on 22nd May, 2025, directing that the suit in Nakuru CMELC 77 of 2020, shall proceed to hearing without a defence by the Appellants. She deponed that on 19th March, 2024, the trial court directed that the Appellants had not filed a response or a defence and the trial would proceed.



3. It was counsel's deposition that the application has been brought without delay and that the advocates on record, duly filed a Statement of Defence dated 26th June, 2020, and sent via the email address of eflingnakurucourt@gmail.com, and urged the honourable court to grant the prayers sought.
4. Paul Kuria Wainaina, the Respondent, filed a Replying Affidavit sworn on 28th July, 2025, and deponed that the application is an abuse of court process, as at 11th October, 2022, the Appellants had not filed a defence and his advocates wrote to them asking to be served with the defence.
5. He further deponed that his advocates did not receive a response to the said letter and thereafter the Appellants filed an amended defence and counterclaim, allegedly amended on 29th August, 2022 which was received under protest as no leave to file the amended defence had been obtained.
6. The Respondent further stated that, when the matter came up for mention on 1st December, 2022, the trial court noticed the irregularities that had been made and asked parties to regularize the record. He deponed that as at 22nd February, 2023, when the matter came up for mention, the Appellants had not filed a defence in order to regularize the record and the trial court directed that the matter would proceed without a defence.
7. It was his deposition that at no time did the Appellants apply to set aside the directions of 22nd February, 2023, nor did they apply for review or appeal. He deponed that the Appellants filed an application dated 22nd April, 2024, which was dismissed by the trial court in its ruling dated 22nd May, 2025, and urged the court to dismiss the application with costs.

Appellants' Submissions

8. Ms. Karungu, counsel for the Appellants, filed submissions dated 11th July 2025 and identified the issue for determination as whether the applicant has met the threshold for stay of proceedings.
9. Counsel submitted that the Appellant filed a defence dated 9th June 2020, via the e-filing platform during the COVID-19 era, when the judiciary migrated to the digital filing system and the Appellant's advocate inadvertently failed to make payments for the filed defence.
10. Counsel submitted that the Application has been brought without undue delay as the same was filed on 9th June, 2025, while the ruling was delivered on 22nd May, 2025.
11. Ms. Karungu, submitted that the Appellant ought not to be rendered unheard due to the mistakes that may have occurred during the pendency of the suit with the multitude of transfers between Magistrates and Advocates. Counsel relied on Articles 40, 50 and 159 (2) (d) of *the Constitution* of Kenya, and the cases: Kenya Wildlife Service vs James Mutembei [2019] KEHC 10478 (KLR), Global Tours & Travels Limited; Nairobi HC Winding Up Cause No 43 of 2000 and Bank of Africa Kenya Limited vs Put Sarajevo General Engineering Co Ltd & 2 others [2018] eKLR.
12. It was Ms. Karungu's further submission that the Appellants have shown a prima-facie case as they filed a response but failed to pay for the same, and relied on the case of Edward Muchiri Ituma vs Beatrice Wangigi & 9 others [2019] eKLR.
13. Counsel submitted that the Appellant has an arguable appeal and they have been participating in the trial proceedings. Further that the onus is on the Respondent to prosecute the suit and he is responsible for the delay as it would be in the best interest of the Appellants to have the suit abate.
14. Counsel relied on the cases of Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018] KECA 701 (KLR) and Ahmed Mohammed Noor vs Abdi Aziz Osman [2019] eKLR, and urged the court to allow the application as prayed with costs.



Analysis and Determination

15. The issue for determination is whether the Appellants have met the threshold for stay of proceedings pending the hearing of the appeal of the ruling delivered on 22nd May, 2025.
16. In Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, stay of proceedings is described as:

“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 the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding 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 cases...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 the pleading and the facts of the case.”
17. In the case of William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others [2019] eKLR, the Court articulated six definitive principles governing the grant of stay of proceedings pending appellate determination of interlocutory matters. They include:
 - a. First, there must be an appeal pending before the higher Court;
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.”
18. The crux of the Appellants' appeal is whether a Statement of Defence was filed in the trial court, whereby counsel submitted that the Appellant filed a defence dated 9th June 2020 via the e-filing platform during the COVID-19 era, when the judiciary migrated to the digital filing system and the



Appellants' advocate inadvertently failed to make payments for the filed defence. It should be noted this suit has not been heard and therefore judgment has not been rendered at the trial court.

19. In the case of Turbo Highway Eldoret Ltd v Muniu (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling) the court stated as follows:

“I am not persuaded, however, that the appeal will be rendered nugatory by the mere fact that the trial may proceed and a judgment on merits given. A judgment given is capable of being stayed. Whether the fact that a party had preferred an interlocutory appeal is entitled to a stay of proceedings cannot, therefore, merely be based on the fact that the Trial Court might consider what the appellant considers to be erroneous conclusions in its judgment. If the rule were otherwise, it would seriously impede proceedings in the trial Courts. This is because a party who is keen on obstructing a case from proceeding would simply prefer multiple appeals against interlocutory rulings by the Trial Court and then seek stay of proceedings in the Trial Court.”

20. I have considered the application, the submissions by counsel, together with the relevant authorities, and find that the application has merit and is hereby allowed. The application has only been allowed due to the averment that the Defence was filed during the 2020 COVID- 19, era, when the judiciary was experimenting with e-filing which had teething problems. Many technological challenges occurred during that period, but were rectified with time and the advancement of the digital platforms which anchored the e- filing system.

21. The Appellants shall file and serve their record of appeal within 30 days from the date herein failure to which the stay of proceedings at the trial court lapses. Costs of the application shall be in the cause. Parties should try to negotiate this interlocutory appeal to avoid the delay in hearing the main suit on merit at the lower court.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 8TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

