



REPUBLIC OF KENYA



KENYA LAW
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**Mucheke v Sairo (Environment and Land Appeal E043 of 2024)
[2025] KEELC 6873 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6873 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E043 OF 2024
LC KOMINGOI, J
OCTOBER 9, 2025**

BETWEEN

JAPHET MEEME MUCHEKE APPELLANT

AND

JOSIAH PARDIYO SAIRO RESPONDENT

RULING

1. This Ruling is in respect of the Notice of Motion dated 6th November 2024 brought under;
(Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21, Order 42 Rule 6 of the Civil Procedure Rules, 2010 and all other enabling provisions of law).
2. It seeks orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. This Honourable Court be pleased to stay all proceedings in Kajiado MCELC/E025/2024 pending the hearing and determination of the intended appeal.
 5. This Honourable court be pleased to issue further orders as it may deem fit and just in the interest of justice.
 6. The costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.



4. The Application is supported by the affidavit of Japhet Meeme Mucheke, the Appellant/Applicant herein, sworn on the 6th November 2024.
5. It appears the Notice of Motion is not opposed. The Respondent who was duly served neglected to file any response.
6. The Notice of Motion was canvassed by way of written submissions.

The Appellants'/Applicants' Submissions.

7. They are dated 4th March 2025.
Counsel submitted that allowing the trial to proceed in the Lower Court will defeat the purpose of the appeal and occasion irreparable injustice.
8. It is further submitted that the Appeal raises substantive questions that merit the appellate court's consideration.
9. The Appeal challenges the legal propriety of enjoining the Applicant in a suit where no reasonable cause of action is disclosed against him.
10. Counsel further submitted that the Appeal will be rendered nugatory if the proceedings in the Lower Court are allowed to proceed.
The Applicant challenges his inclusion in these proceedings and if they proceed to conclusion, he will suffer irreparably. He has put forward the case of Silversten Vs. Chesoni where the Court of Appeal under scored that an appeal's success should not be merely academic.
11. It is further submitted that if the proceedings are not stayed the Applicant will suffer irreparable harm that cannot be adequately compensated by any subsequent order as he will be forced to undergo a trial and incur substantial legal costs and time, defending a claim that fundamentally lacks basis. He has put forward the case of Kenya Shell Ltd Vs. Kibiru & Another (1986) KLRK 410.
12. Counsel also submitted that the Respondent will not suffer any undue prejudice or injustice if the proceedings are temporarily stayed. The Respondent has not obtained any interim relief that would be negatively impacted by a stay.
The Applicant is willing to abide by any reasonable conditions such as an order for expedited filing of the record of appeal.
13. It is also submitted that the court's mandate is to ensure that its process is not abused and that the appeals are meaningful. He has put forward the case of Chris Munga N. Bichage Vs. Richard Nyagaka Tongi & 2 Others (2013) eKLR, where the court stayed the proceedings due to pending appeals on threshold issues emphasizing that it was in the interest of justice to wait for the appellate court's guidance.
Further that, granting a stay will also promote the overriding objective of facilitating the just, proportionate and efficient resolution of disputes as envisaged under Section 1A of the CPA.
14. It is submitted that the Applicant has demonstrated all the requisite grounds for a stay of proceedings. He has put forward the cases of Port Florence Community Health Care Vs. Crown Health Care Ltd (2022) eKLR; Board of Management Kapletundo Secondary School Vs. Lakeside Products Agencies (2022) eKLR; Ezekiel Mule Musembi Vs. H. Young & Co. EA Ltd (2019) eKLR cited with approval in Imco Holdings Ltd Vs. Malachi N. Nyangau (2022) eKLR.



He prays that the proceedings in Kajiado MC ELC No.E025 of 2024 be stayed pending hearing and determination of the Appeal herein.

15. The Respondent did not file any written submissions.

Analysis and Determination

16. I have considered the Notice of Motion, the Affidavit in support, the written submissions and the authorities cited. The issue for determination is whether this Application is merited.

17. In the case of Global Tours & Travel Ltd; Nairobi HC Winding Up Cause 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 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.”

I am guided by the above authority in finding that the instant application has been brought without undue delay.

18. I find that the applicant has demonstrated that he will suffer irreparable harm if the proceedings in the lower court are allowed to proceed.

19. It should be noted that the application is not opposed though the Applicant still has to demonstrate that the court ought to exercise discretion in his favour.

20. In conclusion I find merit in this application and the same is allowed in the following terms:

- a. That the proceedings in Kajiado MC.ELC E025 of 2024 are hereby stayed pending the hearing and disposal of the Appeal.
- b. That the Appellant do file the Record of Appeal within 21 days from the date of this ruling.
- c. That costs do abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF OCTOBER 2025.

L. KOMINGOI

JUDGE.

In the Presence of:

N/A for the Appellant.

N/A for the Respondent.

Peter – Court Assistant.

