



Ethics & Anti-Corruption Commission v Kokita alias Halima Chelagat & 2 others (Environment and Land Case E008 of 2025) [2025] KEELC 7354 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E008 OF 2025**

CK NZILI, J

OCTOBER 29, 2025

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**HALIMA CHELANGAT KOKITA ALIAS HALIMA CHELAGAT 1ST
DEFENDANT**

**EDWIN KIPCHIRCHIR TUM (BEING SUED AS THE ADMINISTRATOR OF
THE ESTATE OF NATHANIEL KIPKORIR TUM) 2ND DEFENDANT**

WILSON GACANJA 3RD DEFENDANT

RULING

1. Through an application dated 23/7/2025, the court is asked to stay the proceedings herein and to suspend the orders issued on 25/6/2025, pending hearing and determination of the intended appeal. The reasons are contained on the face of the application and in a supporting affidavit of Edwin Kipchirchir Tum, sworn on 22/7/2025.
2. The applicant deposed that following the ruling dated 25/6/2025, an appeal with high chances of success has been filed at the Court of Appeal, going by a notice of appeal attached as EKT-(1). The applicants depose that the appeal will have a direct impact and or effect on this matter, and if the matter proceeds for a hearing, the applicants shall be prejudiced and suffer loss if the court pronounces on the weighty legal issues raised in the appeal.
3. The applicants deposes that the estate of the late Nathaniel Tum risks eviction from the premises they have occupied and developed for over 30 years, contrary to Article 40 of *the Constitution*. The applicant deposes that the appeal shall be rendered nugatory and the eviction levied against them; otherwise, the application has been filed on time and in good faith.



4. The 1st and 2nd applicants rely on a written submission dated 28/7/2025. Reliance is placed on Order 42 Rule 6(1) of the Civil Procedure Rules, in the matter of Re Global Tours & Travels Ltd Nairobi HCWC No. 43 of 2002, Jeremiah Matoke -vs- Kenya Commercial Bank Nairobi HCCC No. 290 of 2002, Nine Trading Ltd -vs- Premier Industries Ltd Civil Appeal E463 of 2022, Easy Coach Ltd -vs- Patrick Watani Maende & Others [2018] eKLR, and Francis Njakwe Githiari & Another -vs- D.T. Moi T/A Moi Education Centre [2008] eKLR.
5. As to suspension of the orders issued on 25/6/2025, the applicants submit that the 2nd defendant has been in possession and use of the suit property for over 30 years, and to avoid an unpleasant situation of evicting the applicants, it is only fair that the orders be suspended until the Court of Appeal pronounces itself on the issue. Reliance is placed on the Cabinet Secretary, Ministry of Health -vs- Aura & 63 Others [2024] KECA 2[KLR].
6. The plaintiff/respondent opposed the application through a replying affidavit dated 27/8/2025. It was, however, expunged from the court record for having been filed late and without leave of court. Therefore, the plaintiff relies on written submissions dated 16/9/2025, that the applicants do not deserve a stay of the proceedings, that the intended appeal is frivolous and stands no chance of success, and that the orders made were interim and not final.
7. Whether or not to issue an order of stay of proceedings is a discretionary power to be exercised after the consideration of the merits of the case, and the likely effects on the ends of justice. It must be exercised judiciously, conscientiously, and on defined principles.
8. In Re Global Tours & Travel Ltd (supra), the court held that the sole question of whether or not to grant a stay is essentially to weigh the pros and cons of granting or not granting the order. In considering the same, the court said there would be a need to consider the need for expeditious disposal of cases, the prima facie merits of the intended appeal, scarcity and option utilization of judicial time, and whether the application has been brought expeditiously.
9. Stay of proceedings has been termed as a serious, grave, and fundamental interruption of the right that a party has to conduct their litigation toward the trial based on the substantive merits of their case. In Halsbury's Law of England, 4th Edition Vol. 37 pp 330, it is observed that a stay should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue, and that the power should be sparingly and exceptionally exercised, and only where the proceedings are frivolous, vexatious, harassing, or manifestly groundless.
10. Stay of proceedings, as held in Kenya Wildlife Service -vs- James Mutembei [2019] eKLR, should not be confused with a stay of execution. The court said that it impinges on the right to access justice, the right to be heard without delay, and the right to a fair trial. The court held that the test for stay of proceedings must therefore be high and stringent.
11. Article 159 2(a)(b)(c) and (d) of *the Constitution* and Section 1A and 1B of the *Civil Procedure Act* enjoin the court to foster and facilitate the overriding objective to render justice to all parties in an expeditious manner. This includes the right to begin and conclude suits without unreasonable delay.
12. In Easy Coach Ltd -vs- Patrick Watani (supra), the court held that the diligence of the trial court and the attitude towards expedited disposal of cases is something to be commended.
13. In Francis Njakwe Githiari & Another -vs- D.T. Moi (supra) and in Nine Trading Ltd -vs- Premier Industries Ltd (supra), the court cited Wachira Waruru & Another -vs- Francis Oyatsi [2002] 2 EA 664, where the court emphasized that the applicant must demonstrate the likely direct consequence of not staying the proceedings.



14. Applying the foregoing case law, the court has to weigh whether the pros and cons of a stay in these proceedings are less than the difficulties that the plaintiff and the judicial system would be exposed to if the court proceeded with the hearing of the suit.
15. The intended appeal before the Court of Appeal is over a ruling in which the court exercised its discretion to grant a temporary injunction, pending hearing and determination of the suit. There were no final orders issued, more so, like eviction orders against the 1st and 2nd defendants. Expedited hearing of the suit is in the interest of the 1st and 2nd defendants, so that the court can reach a decision on the merits after hearing all the parties and assess whether the interim orders are merited.
16. Exceptional circumstances are what the applicant must demonstrate why the right to fair hearing, access to justice, and expeditious disposal of suit should be curtailed in their favour as opposed to the plaintiff. In *William Odhiambo Ramogi & Others -vs- Hon. Attorney General & Others* [2019] eKLR, the court held that an applicant must explain why the stay has not been sought in the higher court, demonstrate that the appeal has high chances of success is likely to be rendered nugatory, if stay of proceedings is not granted, and that there are exceptional circumstances to make the stay warranted.
17. As to suspension of the orders, the court in *Cabinet Secretary, Ministry of Health -vs- Aura* (supra), was faced with a situation where the applicant had not been allowed to be heard before the orders were issued ex parte.
18. In this application, the applicants were heard on the merits before the temporary orders of injunction were issued. The court therefore finds no basis to suspend its own orders. A court cannot be expected to make orders out of nowhere. There must be some evidence or basis why the court should revisit its orders when it is already functus officio.
19. The principle is that once proceedings are finally concluded, the court reviews its decision only on review, based on new or fresh material that was not before it when it made the decision. See *Raila Odinga & Another -vs- IEBC*(supra).
20. Consequently, the application is dismissed with costs.
21. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 29TH DAY OF OCTOBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Githinji for plaintiff present

Odwa for the 1st and 2nd defendants present

1st defendant absent

