



**Mukonza & another v Mutio & another (Environment and Land Case
18 of 2024) [2025] KEELC 7449 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE 18 OF 2024**

**EO OBAGA, J
OCTOBER 30, 2025**

BETWEEN

PETER MWAU MUKONZA 1ST PLAINTIFF

WILFRED KIOKO MUTISO 2ND PLAINTIFF

AND

IMELDA MWIKALI MUTIO 1ST DEFENDANT

ESTHER MINOO MUKONZA 2ND DEFENDANT

RULING

1. Before this court for determination is the application dated 19th March, 2025 filed by the Defendants. The following orders have been sought: -
 1. [Spent]
 2. That the court be pleased to order temporary stay of proceedings in the matter herein pending the hearing and determination of Makueni HCSC No. 334 of 2017 which seeks to revoke the temporary letters of administration issued to the Plaintiff's herein pending this application interparties.
 3. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face. It is also supported by the affidavit of Imelda Mwikali Mutio sworn on even date. The deponent averred that the Co-defendant is her mother and that the Plaintiffs are her brothers. She further averred that the subject matter of the suit is land Parcel No. Konza South/Konza South Block 4/2417 which belongs to the 1st Defendant. The deponent contended that she gave her mother the money to purchase the land and the same was duly transferred to the deponent afterwards.



3. The deponent asserted that the suit property was not owned by the late Emmanuel Mukonza and that the Plaintiffs woke up to claim the land when the deponent sued her mother in Machakos ELC No. 41 of 2022 which led to the transfer of the suit property to her as per the court order issued on 29/9/2022.
4. The deponent averred that when the Plaintiffs applied for the grant of letters of administration in respect of the estate of Emmanuel Mukonza, the suit property was not listed as part of the estate of the deceased. She further averred that the temporary grant issued to the Plaintiffs was obtained fraudulently by making a false statement and by concealment of material facts. She also contended that the Plaintiffs misled the court on who the actual beneficiaries of the Estate of the deceased are in Makueni HCSC No. 334 of 2017 as well as the properties of the deceased.
5. The deponent asserted that the succession proceedings shall determine the capacity of the Plaintiffs to file the suit on behalf of the estate of Emmanuel Mukonza and as to whether the suit property is part of the estate of the deceased. It is the deponent's contention that the instant suit cannot be determined in the pendency of the succession proceedings and it is therefore fair and just that the proceedings herein be stayed.
6. Opposing the application, the Plaintiffs filed a replying affidavit sworn by Peter Mwau Mukonza on 29th April, 2025. He averred that he has been residing in the suit property together with the 2nd Plaintiff since 2008. That the Defendants, who are his sister and mother respectively, relocated to Nairobi from the suit property several years back. He contended that the issues before this court are whether the suit property belongs to his deceased father and whether their stay on the suit property has been as of right.
7. The 1st Respondent averred that even though they applied for letters of administration, the said grant was not necessary for purposes of instituting the present suit as the suit land is already registered in the name of the 1st Defendant, and according to the rest of the family members, fraudulently so.
8. The 1st Respondent contended that the issues before this court are distinct and exclusive to the issues pending before the succession court. He urged the court to dismiss the application with costs.
9. The application was canvassed by way of written submissions.
10. In the Applicants' submissions dated 15th May, 2025, Counsel contended that there are three main conditions which an applicant must satisfy for an order of stay of proceedings to issue making reference to the case of Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi [2014] eKLR.
11. Submitting on whether the Applicants had demonstrated a prima facie arguable case, Counsel opined that it had been demonstrated that they have a real substantial issue in the succession case which directly affects the ownership and distribution of the suit property. Counsel was of the view that if the orders sought herein are not issued, the suit may render the succession cause nugatory and result in conflicting judgments.
12. Submitting on whether the application had been filed expeditiously, Counsel contended that upon becoming aware that the Respondents had obtained a temporary grant, the Applicants immediately filed summons for revocation of the said grant. It was further contended that the application herein had been filed within a reasonable and legally acceptable time.
13. Submitting in whether the Applicants had established sufficient cause, Counsel contended that the succession proceedings go to the root of ownership of the suit property and that a stay of proceedings herein will prevent a miscarriage of justice. It was further submitted that no prejudice will be suffered by the Respondents if a temporary stay order granted.



14. The Respondents filed their submissions dated 4th June, 2025. Reiterating the contents of the replying affidavit, Counsel submitted that Makueni HCSC No. 334 of 2017 relates to the following assets of Emmanuel Musyoka Mukonza (deceased): -
 - a. Kithembe/Kauti 645; and
 - b. Kithembe/Kauti 718
15. Counsel contended that the suit property herein is not in the name of the deceased and does not form part of the estate. It was further contended that the suit property is not the subject matter of proceedings in any other court and therefore the sub judice rule is not applicable. Counsel submitted that the decision of the succession court would not stop this court from rendering its own judgment. Counsel reiterated that the instant suit is not filed on behalf of the estate of the deceased. It was contended that the Plaintiffs have filed this suit in their personal capacities and they have also pleaded being on the land since 2007 with the knowledge of the Defendants.
16. Counsel expressed the view that whether or not the 1st Defendant was properly registered as the owner of the suit property is a question which is exclusively within the jurisdiction of this court. In addition, Counsel submitted that the probate court has no power to cancel a title to land which is a power given to this court under Section 13 of the *Environment and Land Court Act*. Counsel urged the court to dismiss the application with costs for lack of merit.
17. After an avid perusal of the application and the rival submissions, the only apparent issue for determination is whether this court should stay the proceedings herein pending hearing and determination of Makueni HCSC No. 334 of 2017.
18. In answering this question, it must be borne in mind that the onus lies with the Applicants to convince this court why discretion should be exercised in their favour.
19. A good starting point when making a consideration over whether an Applicant has demonstrated merit in an application for stay of proceedings is the excerpt from Halsbury's Laws of England, 4th Edition Vol. 37 page 330 and 332. The authors state as follows: -

“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 application 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.”



20. In *Wycliffe Oparanya Ambetsa v Director of Public Prosecutions* [2017] eKLR, the Supreme Court borrowed insight from the case of *R v Massey* [2001] EWCA Crim 2850, [2000] All ER (D) 339 (Dec) where the court observed as follows: -
- “At common law, therefore, a stay should only be imposed in exceptional circumstances, and even more rarely in the absence of fault on the part of the complainant or prosecution, and no stay should be imposed unless a defendant has established, on the balance of probabilities, that he would suffer serious prejudice to the extent that no fair trial could be held.”
21. Similarly, in *Marriot Africa International Ltd v Margaret Nyakinyua Marigu & 4 Others*, CA No. Nai. E152 of 2022, the Court of Appeal aptly held as follows: -
- “Whilst this Court has unfettered jurisdiction to issue an order of stay of proceedings, it must be satisfied that there are genuine and compelling grounds to justify such an order, whose effect may be to undermine one of the fundamental constitutional principles, namely that justice shall not be delayed.”
22. The considerations to be made by the court in determining an application for stay of proceedings were outlined in the case of *Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi* [2014] eKLR in the following manner: -
- “To my mind, the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles;
- a. Whether the applicant has established that he/she has a prima facie arguable case.
 - b. Whether the application was filed expeditiously and
 - c. 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.”
23. In the instant application, the Applicants contend that the ownership of the suit property is an issue which is also pending before the probate court in *Makueni HCSC No. 334 of 2017*. In support of the above contention, the Applicants annexed a copy of the petition for letters of administration intestate dated 20th December, 2013. In the affidavit in support of the petition, the listed assets in the estate of the deceased are *Kithembe/Kauti 645* and *Kithembe/Kauti 718*.
24. At paragraphs 3 and 5 of the affidavit in support of the present application, the Applicant avers that the suit property Parcel No. *Konza South/Konza South Block 4/2417* belongs to her after the 2nd Defendant transferred it in her name. In their pleadings, the Plaintiffs allege that the suit property belonged to their father *Emmanuel Musyoka Mukonza (Deceased)* and that they derive a beneficial interest thereon being the sons of the deceased.
25. At paragraphs 5 and 6 of their replying affidavit, the Plaintiffs aver that they have been in possession of the suit property since 2008 as of right and that the land was fraudulently transferred to the 1st Defendant by the 2nd Defendant when initially, it belonged to their late father.
26. From the foregoing it, it is clearly evident that the issue of ownership of the suit property is not an issue pending determination before the probate court. The real issue before the court in *Makueni HCSC No. 334 of 2017* whether the appointment of the Plaintiffs as administrators of the estate of



the deceased was irregular and if so whether the grant issued on 19th March, 2014 ought to be revoked by the court.

27. Therefore, in view of the observations made above, the Applicants have not demonstrated a prima facie arguable case. This court is best placed to determine whether the title of the suit property was fraudulently transferred to the 1st Defendant by the 2nd Defendant. No prejudice whatsoever has been demonstrated by the Applicants to justify how the continuation of proceedings before this court would render the proceedings before the probate court nugatory. All the parties herein ought to have their day in court for a determination of the legitimate owner of the suit property.

28. In Kenya Wildlife Service v James Mutembei [2019] eKLR, Justice F. Gikonyo held as follows: -

“Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceeding is high and stringent.”

29. Accordingly, the application herein is devoid of merit. It is dismissed with no order as to costs as parties are related.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF OCTOBER, 2025.

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HON. E. O. OBAGA
JUDGE

In The Presence Of:

Ms. Lokol for Defendants.

Mr. Kiluva for Mr. Makundi for Plaintiff.

Court assistant Steve Musyoki

