



REPUBLIC OF KENYA



**Sigat v Sigat (Environment and Land Appeal E002 of 2025)
[2025] KEELC 5808 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5808 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND APPEAL E002 OF 2025**

JM MUTUNGI, J

JULY 31, 2025

BETWEEN

MOHAMED MOHAMUD SIGAT APPELLANT

AND

SAADIYA MOHAMMED SIGAT RESPONDENT

RULING

1. Before me for determination is the Notice of Motion application dated 26th February 2025 brought by the Appellant/Applicant, under Sections 1A and 3A of the [Civil Procedure Act](#), Cap. 21 Laws of Kenya, Order 42 of the [Civil Procedure Rules, 2010](#), and Section 40 of the [Practice Directions on Proceedings in the Environment and Land Court](#). The Applicant seeks the following substantive orders:
 1. Stay of proceedings in Garissa Magistrate’s Court ELC No. E020 of 2024 pending the hearing and determination of this Appeal;
 2. Setting aside of the Ruling and consequential orders of the Honourable Omwange J. delivered on 19th February 2025;
 3. That the Appellant’s application dated 30th December 2024 be allowed;
 4. Costs of this application.
2. The application was supported by the Applicant’s Affidavit sworn on 26th February 2025 on the grounds that; the Applicant is the lessee of Plot No. GSA/21669, which he leased from the Garissa County Government in 2015; that he is in lawful occupation of the property and has rented it out to tenants who pay him rent; and that the Respondent, who owns a neighboring property, had interfered with this arrangement by demanding rent and threatening to evict the tenants prompting the Applicant to file a suit in the Lower Court. That after hearing the case, the Lower Court declined to grant the Applicant’s substantive prayers and instead issued an order directing that the rental income



from the property be deposited in Court pending the determination of the main suit. The Applicant contends that this order was issued without considering that he has had control of the property since 2015.

3. In response, the Respondent filed a Replying Affidavit sworn on 9th April 2025, asserting ownership of Garissa/Township Block 1/416. She averred that the Applicant's property, GSA/21669, did not exist. The Respondent averred that she hired a Licensed Surveyor who was unable to find any existing plan or F.R. Number corresponding to Plot GSA/21669. The Respondent further averred that the current application was intended to delay the proceedings in the Lower Court and create confusion regarding the true identity and location of the property. The Respondent maintains that the disputed premises are the same and that the rental income originates from her land. She asserted that she has heavily invested in developing the property but had not benefited from its use, as the Applicant has wrongfully collected rent. The Respondent contended that the Lower Court's order was intended to preserve the subject matter of the suit pending final determination and did not constitute a deprivation of any of the parties' rights. The Respondent contended she stood to suffer irreparable loss if the Applicant continued to collect rent and she was successful in the suit. She urged that should the Court be inclined to grant stay, that such stay be on condition that the Applicant provides security.
4. The Applicant filed a Further Affidavit dated 6th May 2025 where she challenged the admissibility of the Surveyor's report on the basis that the Surveyor's report was not part of the record of the Lower Court and would be prejudicial if it was admitted in these proceedings before this Court.
5. The application was canvassed by way of written submissions. The Applicant filed his written submissions dated 7th May 2025. He argued that the survey report filed by the Respondent constitutes new evidence that was not placed before the trial Court and should not be admitted. He contended that the Lower Court erred by granting consequential orders not formally sought by any party, thus violating procedural fairness. He cited the principle that a party cannot be denied their source of income based on mere suggestions without due process.
6. The Respondent filed her written submissions dated 16th May 2025. She argued that the Lower Court's orders were merely preservatory and just in light of the disputed ownership of the suit property. She argued that a stay of proceedings was an extraordinary remedy that should be justified by exceptional circumstances, which the Applicant had not demonstrated.
7. I have reviewed the Notice of Motion, the Replying Affidavit, the Further Affidavit, and the parties' written submissions. The issues that arise for determination are:
 1. Whether the Applicant has satisfied the conditions for grant of an order of stay of proceedings pending Appeal.
 2. Whether the Lower Court's Ruling and orders should be set aside at this interlocutory stage.
 3. Whether the Applicant's objections to the admissibility of the survey warrant consideration at this stage.
8. The principles governing the grant of stay of proceedings are well settled. Order 42 Rule 6 (1) of the [Civil Procedure Rules](#) provides that an Appeal shall not operate as stay unless the Court so orders. it provides as follows:
 - “(1) No Appeal or second Appeal shall operate as a stay of execution or proceeding under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such



stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the Appeal is preferred may apply to the Appellate Court to have such order set aside.(2)No order for stay of execution shall be made under subrule (1) unless –(a)the Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and(b)such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”

9. Unlike stay of execution under Rule 6 (2), stay of proceedings is governed by broader Judicial discretion and is exercised sparingly. In the Case of *Willim Odhiambo Ramogi & 2 Others v The Honourable Attorney General & 3 Others* (2019) eKLR, the High Court laid out five guiding principles as follows:

1. There must be a pending Appeal.
2. The application must be made expeditiously.
3. The Appeal must risk being rendered nugatory.
4. Exceptional circumstances must exist.
5. The prejudice must be irreparable or incapable of being compensated by damages.

10. All these factors must be considered for an order of stay of proceedings to be granted. *Halsbury's Laws of England*, 4th Edition Vol. 37 (Practice and Procedure) at p.330:

“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 proceedings, beyond 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 this case.”

11. The Applicant has filed an Appeal and approached the Court without unnecessary delay. However, he has yet to demonstrate that continuing the trial would cause exceptional or irreparable harm. The record indicate that the rental income will be preserved and not forfeited while the case is resolved.

12. In the case of *Global Tours & Travels Ltd*, Winding Up Cause No. 43 of 2000 (unreported) the Court highlighted that granting a stay of proceedings is a serious measure that disrupts the trial process and should only be considered when failing to do so would result in a miscarriage of justice. No such compelling circumstances have been demonstrated in this case. In the Case of *Global Tours & Travel Ltd}}* (supra), Ringera J (as he then was) inter alia}} held as follows:-

“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.”

13. I am in the premises not satisfied the Appellant has demonstrated the existence of any circumstances that would render it necessary to order stay of proceedings before the Lower Court. The parties will be duly heard before the Lower Court and any dissatisfied party will have a right of Appeal. I perceive no injustice that may be visited on any of the parties. Indeed the order for deposit of the rental income is in the nature of a preservation order that serves the interest of both parties. If either of the parties is the successful party they will have access to the deposit. There can therefore be no irreparable harm or loss to either party.
14. The Applicant further, through the current application, prays for an order to set aside the Ruling and any consequential orders issued by the Lower Court on 19th February 2025. The issue arises whether it is appropriate to grant such substantive relief through an interlocutory application such as the one before the Court when an Appeal against the same Ruling has already been filed and is pending.
15. It would of course be inappropriate to give such orders whose effect would be to determine the Appeal and thus render the Appeal to be of no consequence. That essentially is what the Appellant seeks to achieve through the Appeal. The Appeal is challenging the exercise of discretion by the Lower Court and that can only be canvassed at the hearing of the Appeal and not at the interlocutory stage of the Appeal. It is premature for the Court to determine on the merits of the Appeal and consequently this prayer is unsustainable and is refused.
16. I do not consider that anything turns on the Survey report that the Appellant argues the Respondent has introduced when it was not part of the record before the Lower Court. The case before the Lower Court is yet to be heard and parties have a right to produce and rely on any documents in support of their case. Perhaps the right forum to challenge the Surveyor’s report would be before the Lower Court during the hearing if the same is tendered in evidence.
17. The upshot is that the Appellant’s Notice of Motion application dated 26th February, 2025 lacks any merit and the same is ordered dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 31ST DAY OF JULY 2025.

J. M. MUTUNGI

ELC - JUDGE

