Abdille v County Government of Wajir & another (Environment and Land Appeal E006 of 2024) [2025] KEELC 5647 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5647 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

ENVIRONMENT AND LAND APPEAL E006 OF 2024

JM MUTUNGI, J

JULY 30, 2025

BETWEEN

ABDIRAHMAN MOHAMED ABDILLE ..... APPELLANT

AND

COUNTY GOVERNMENT OF WAJIR ..... 1ST RESPONDENT

TELKOM (K) LTD ..... 2ND RESPONDENT

RULING

1. On 23rd October 2024 Hon. R. Aganyo Principal Magistrate delivered a Ruling in Wajir Magistrate ELC No. 1A of 2023 ordering the suit to be consolidated with Wajir MC ELCC No. E002 of 2022 and directed that Wajir MC ELCC No. 1A of 2023 be the lead file. The 2nd Defendant, Abdirahman Mohamed Abdille, aggrieved by that Ruling lodged the instant Appeal before this Court vide a Memorandum of Appeal dated 4th November 2024.

2. Simultaneously with lodging the Appeal, the Appellant filed a Notice of Motion of even date and inter alia prayed for an order:-

> " That pending hearing and determination of the Appeal there be a stay of proceedings in Wajir MC ELCC No. 1A of 2023 – *County Government of Wajir –vs- Telkom (K) Ltd & Abdirahman Mohamed Abdille*."

3. The application was supported on the grounds that the Appellant had appealed against the Ruling by Hon. R. Aganyo and that if stay of proceedings was not granted, the Appeal would be overtaken by events and would be of no consequence even if successful. The application was further supported on the grounds set out in the Supporting Affidavit sworn by the Appellant/Applicant where he deponed inter alia that the application by the 1st Defendant/Respondent to be joined as an Interested Party in Wajir MC ELCC No. E002 of 2022 had earlier been dismissed by the Court and the 1st Respondent

did not Appeal against that dismissal but instead filed a fresh suit in Garissa ELC No. E003 of 2023. This suit was transferred by Garissa ELC to Wajir Magistrate's Court and allocated Wajir MC ELCC No. 1A/2023. The 1st Respondent applied for this suit to be consolidated with Wajir MC ELCC No. 002 of 2022 notwithstanding that the Court had earlier dismissed the 1st Respondent's application to be joined in Wajir MC ELCC No. 002 of 2022 as a party. The Applicant averred by the Ruling, the Learned Magistrate effectively joined the 1st Respondent in Wajir ELCC No. 002 of 2022 yet she had declined to join he 1st Respondent as a party in the suit earlier on and there was no Appeal against that Ruling.

4. The 1st Respondent opposed the application through a Replying Affidavit sworn by Naema Ibrahim Somo, County Attorney, Wajir County on 11th March 2025. She deponed that the proceedings in Wajir MC ELCC No. E 1A of 2023 and Wajir MC ELCC No. E002 of 2022 relate to ownership of LR No. 13607/246 Wajir which is the subject matter in both suits. The 1st Respondent averred that consolidation of the two suits was justified as it ensured efficiency in the conduct of Judicial proceedings and avoided the existence of a multiplicity of suits on the same subject matter. The 1st Respondent contended the Appellant/Applicant's application for stay of proceedings before the trial Court lacked any merit as the consolidation was not prejudicial to any party but rather ensured access to Justice without delay.

5. The application was argued by way of written submissions. The Appellant filed his submissions dated 22nd April 2025 but as at the time of preparing this Ruling the 1st Respondent, had not filed any submissions.

6. I have reviewed and considered the application, the Supporting Affidavit, the Replying Affidavit and the submissions made on behalf of the Appellant/Applicant. The singular issue for determination is whether the Court should order stay of proceedings before the Magistrate's Court pending the hearing and determination of the Appeal.

7. It is note worth that the instant Appeal arises from the determination of an interlocutory application where the Learned Magistrate ordered the consolidation of Wajir MELC No. E1A of 2023 and Wajir MC ELC No. E002 of 2022 on the basis that the subject matter was the same and that it would be more efficient to have the two suits heard together. The Learned Magistrate in her Ruling noted the Plaintiffs in two suits were each raising ownership claims in regard to land parcel LR No. 13607/246 Wajir. It was her view that the two suits could be disposed simultaneously.

> " upon the Court making appropriate directions to ensure that there is an orderly hearing of the matter."

8. There is no question the Learned Magistrate had jurisdiction to order the consolidation of the two suits once she was satisfied the principles upon which consolidation could be made were met. The Court in the case *Stumberg and Another –vs- Potgeiter* (1970) EA 323 stated as follows in regard to when consolidation maybe made:-

> " where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered."

9. The Appellant's argument in his submission was that the 1st Respondent's application to be joined as a party in Wajir MELC No. 002 of 2022 had earlier been dismissed by the Court and that the Applicant had not appealed that Ruling. The Appellant thus argued the order of consolidation in effect joined the

1st Respondent as a party in a suit where its application for joinder had been declined. He contended the issues raised in the application for consolidation in the Magistrate's Court ought to have been held to be res judicata as the 1st Respondent's earlier application for joinder had been dismissed.

10. With respect, the 1st Respondent never became a party in Wajir MELC No. 002 of 2022 as its application for joinder was dismissed. That did not bar them from filing a suit in their own right and they filed Wajir MELC No. 1A of 2023 which they sought to be consolidated with Wajir MELC No. 002 of 2022 and the Magistrate agreed. Any application for joinder of a party to a suit and an application for consolidation of a suit with another, have different considerations and I doubt the doctrine of *res judicata* would be applicable in the instant matter where the 1st Respondent's application for joinder was dismissed. I hold the *res judicata* doctrine would not be applicable.

11. The Magistrate's Court having ordered the consolidation of the two suits to be heard together is in law entitled to proceed with the proceedings and conduct of the suit until determination unless there are valid grounds for the proceedings to be stayed. In the instant application, the issue is whether the Appellant has advanced sufficient grounds to warrant the Court to intervene and order stay of the proceedings. In the case of *Kenya Wildlife Service –vs- James Mutembei* (2019) eKLR, Gikonyo, J stated as follows:-

> " Stay of proceedings 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."

12. In my view a party seeking to have proceedings before any Court stayed must demonstrate that he stands to suffer prejudice or some injustice unless those proceedings are stayed. Where as in the instant matter an Appeal is against a Ruling issued in an interlocutory application, an Applicant for stay of the Lower Court's proceedings should show how that Court by proceeding with the hearing of the matter would be prejudicial to him, considering the party will still be a party and entitled to participate in the proceedings.

13. In the instant matter, by the Court consolidating the two suits it would more efficiently manage and utilize Judicial time as it would definitely save on time as the common witnesses in the twin suits would not need to testify twice and the Court would not need to prepare two Judgments but one. I do not see any prejudice the Appellant would suffer as he would have the opportunity to testify in support of his case and in defence of the 1st Respondent's case and will have the opportunity to cross examine any witnesses offered by the 1st Respondent. Besides, if any party was dissatisfied with any Judgment the Learned Magistrate would render, they would be entitled to challenge the same on Appeal.

14. The upshot is that I find no merit in the Appellant's Notice of Motion dated 4th November 2024. I dismiss the same with costs to the 1st Respondent and the interim order of stay given in this matter on 8th November, 2024 is hereby vacated and discharged.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 30TH DAY OF JULY 2025.

J. M. MUTUNGI

ELC - JUDGE