



**Ramadhan v Makokha (Environment and Land Appeal E033 of 2023)
[2025] KEELC 8227 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8227 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E033 OF 2023
A NYUKURI, J
NOVEMBER 27, 2025**

BETWEEN

HADIJA NANDWA RAMADHAN APPELLANT

AND

ISMAIL MWIMA MAKOKHA RESPONDENT

RULING

Introduction

1. Before court is a notice of motion dated 13th May 2025 filed by the appellant seeking the following orders;
 - a. That this honourable court be pleased to stay further proceedings in this appeal, pending the hearing and determination of Summons dated the 5th Day of November 2024 vide Kakamega High Court Succession Cause No. 661 of 2013.
 - b. That costs be provided for.
2. The application is predicated on the supporting affidavit sworn by the appellant. The applicant's case is that in the decision of Matungu Land Disputes Tribunal Claim No. 8 of 2005, the court awarded 1 acre of land from parcel No. North Wanga/Matungu/985 to one Ali Makokha Wangatia. That the said decision was adopted in Kakamega CMC MISC Award No. 39 of 2007 as a judgment of the court. That subsequently, Ali Makokha sold half acre of the aforesaid one acre to the appellant who has since established a homestead and settled thereon. That the respondent failed to include the appellant's participation in succession proceedings and that Ali Makokha Wangatia has filed Summons dated 5th November 2024 in Kakamega Succession Cause No. 661 of 2013 seeking review and redistribution of the estate to reflect 1 acre awarded to him. That the half acre stated above is subject of the current appeal.



3. He attached the tribunal award, plaint, certificate of confirmation of grant and summons for revocation.
4. The application was opposed. The respondent filed replying affidavit dated 28th May 2025. He stated that this appeal was filed on 6/11/2023 and directions given on 9/10/2024. That parties were directed to file submissions and the respondent filed his submissions on 11th February 2025. That the appellant has never filed submissions. That the instant application is a delay tactic. That the High Court made a ruling in Succession Case No. 661 of 2013. That the applicant failed to comply with directions of this court made on 10th February 2025, and that the application should be dismissed. He attached a copy of the ruling in Kakamega HC Succession Cause No. 661 of 2013.

Analysis and determination

5. The court has carefully considered the application, and the replying affidavit. The sole issue that arise for determination is whether the applicant has met the threshold for grant of stay of the proceedings in this matter.
6. Staying a suit is not a matter to be taken lightly, because suits once filed ought to be heard and determined expeditiously as envisaged under the provisions of Article 159 of *the Constitution* of Kenya which requires that justice should not be delayed. As was held in the case of Kenya Wildlife Service v Mutembei (2019) e KLR, the threshold for an application for stay of proceedings stringent because staying any proceedings detrimentally interferes with the parties' right to access to expeditious justice and the right to a fair trial enshrined in Articles 48 and 50 of *the Constitution* of Kenya. Thus, an order for stay of proceedings ought to be granted only where the interests of justice would require that proceedings be halted.
7. The Halsbury's Laws of England 4th Edition Vol. 37 at p. 330 states that;

“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 be allowed to continue.”
8. Therefore, stay of proceedings will ordinarily not be granted unless it is demonstrated that proceeding with the matter will result in a grave injustice or where justice might not by any other means be attained. (See Gardiner and Lansdown (6th Edition Ed. Vol. 1 p. 750)
9. In seeking stay of proceedings to await the determination of the summons filed by one Ali Makokha Wangatia in Kakamega HCC Succession Cause No. 661 of 2013, the applicant has referred to proceedings before the Land Disputes Tribunal in 2005 which were adopted in 2007 at Kakamega CMC's court and on which basis she argues, vests the suit property in her. I have had occasion to consider pleadings filed in the lower court. While the respondent claimed ownership of the suit property and vacant possession on the basis of registration of the same in his name, the appellant counterclaimed the same on the basis that he purchased the same from Ali Makokha Wangatia who was allegedly awarded 1 acre of the suit property by the Land Disputes Tribunal and which award was adopted in Kakamega CMC MISC Award No. 39 of 2007. This appeal challenges the decision of the lower court to grant the respondent vacant possession of parcel No. North Wanga/Matungu/985 and a sum of Kshs. 200, 000/= for damages for loss of user. The applicant therefore has made a claim based on purchase and adverse possession, while the respondent made a claim based on registration.



10. The applicant and by extension Ali Makokha cannot be shuttling between this court and the High Court. She has to make up her mind on where her suit will be heard. However, as the respondent chose this court to determine his claim, the applicant herein having been the one who filed the appeal and having not presented any compelling material to demonstrate beyond reasonable doubt that justice will not be served until the proceedings herein are halted, I find no justification to stay these proceedings. Therefore, I hereby dismiss the application dated 13th May 2025 with costs to the respondent.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF NOVEMBER, 2025
THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

A. NYUKURI

JUDGE

In the presence of;

Ms. Ikhumba for the applicant

Mr. Mukoya for the respondent

Court Assistant: Delphine

