



Beach Villas Limited v Mogeni & 4 others (Environment and Land Case 6 of 2020) [2025] KEELC 8408 (KLR) (2 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8408 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 6 OF 2020
MD MWANGI, J
DECEMBER 2, 2025**

BETWEEN

BEACH VILLAS LIMITED PLAINTIFF

AND

KELVIN TOM MOGENI 1ST DEFENDANT

DAVID KINISU SIFUNA 2ND DEFENDANT

COUNTY GOVERNMENT OF KILIFI 3RD DEFENDANT

LAND REGISTRAR, MOMBASA 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. On 18th June 2024, the court stated as follows in the present matter regarding a ruling on a stay of proceedings:

“The vital issue on appeal concerns the jurisdiction of this court which is challenged on the grounds that there exists a consent order adopted in a different case. This court has already found that it is seized of jurisdiction. It remains to be seen whether a contrary decision may emanate from the appeal.

It is proper that this court do direct its efforts towards resolving other disputes and avoid expending any resources on the present matter during the pendency of that appeal. Consequently, I am of the view that the proceedings herein should be stayed. The upshot of the foregoing analysis is that the notice of motion dated 24/1/2024 has merit and it is hereby granted in terms of prayer no (iii) thereof. Further, to ensure that the applicant does not drift into somnolence padded by the coziness of the stay order granted it is hereby ordered as follows:



- a. The applicant shall file and serve the record of appeal within 30 days of this order;
 - b. In default of filing and service as ordered in (a) above the stay order granted herein shall stand automatically vacated;
 - c. This matter shall be mentioned on 24th October 2024 to ascertain compliance with order no (a) herein above and, in the event of non-compliance, to issue it with a hearing date.”
2. Now the parties are before this court again each seeking some species of stay. The plaintiff seeks stay of the 2nd defendant’s motion seeking to strike out the suit with costs on the strength of pending proceedings in Milimani HCJR E280 of 2025. The 2nd defendant seeks a stay of all the proceedings in this suit pending appeal being civil appeal no E025 of 2024. It is that appeal that was referred to in the earlier ruling of this court dated 18th June 2024. It is clear that after the stay was granted on 18/6/24, the 2nd defendant never complied with the orders in the ruling giving stay and it lapsed. Upon another application for enlargement of time to comply therewith, this court declined such extension in a ruling dated 16th January 2025. Hence in his application dated 9/10/2025, he seeks that the ruling of 16th January 2025 be reviewed and the order of 18/6/2024 be restored.
 3. From a perusal of the file, it is clear that this court needs to grant the plaintiff a stay pending the determination of the judicial review application in Nairobi Milimani case. The issue that arises is whether a review of this court’s orders of 16th January 2025 declining to extend a stay of proceedings order ought to be reviewed.
 4. The 2nd defendant has pointed out that the plaintiff has now found itself in a similar situation of needing a stay due to other proceedings pending elsewhere, which proceedings, according to the 2nd defendant, are calculated at curing defects in the plaintiff’s legal capacity. The 2nd defendant avers that he does not oppose that application. However, the plaintiff is not reciprocative of the 2nd defendant’s gesture and is opposing the 2nd defendant’s application for stay of proceedings.
 5. This court is empowered by the provisions of order 42 CPR to grant a stay either of execution or of proceedings pending appeal.
 6. I have considered the two applications – the plaintiff’s application dated 22/9/2025 and the 2nd defendant’s application dated 9/10/2025. In this court’s view the two parties are finding themselves in the awkward position of seeking stay of proceedings at the same time though the 2nd defendant’s stay if granted may last a longer time than the plaintiff’s, the latter who wishes to only stay the hearing of an application.
 7. Neither the grounds expressly stated in order 42 – discovery of new matter or evidence or error on the face of the record are being urged by Mr Kinisu for the 2nd defendant. He relies on the new environment parties find themselves in of the plaintiff seeking a stay of proceedings, and thinks that the orders declining him enlargement of time ought to be reviewed.
 8. On the day the court declined his oral application, Mr Kinisu had indicated that the record of appeal was already filed and that the court of appeal was seized of the matter. The witnesses for that day had travelled from Italy and the court ordered a hearing to proceed. The consideration that there was a witness from Italy in my view persuaded the court that the matter ought to proceed to hearing that day. Today there is no witness whose day would be wasted if the orders of stay are granted. Besides the circumstances have changed as even the plaintiff is seeking a stay. Order 45 Rule 1 (b) allows for



review for any other sufficient reason and this court thinks that the changed environment the parties find themselves in is fertile ground for review of its orders in order to balance parties' interests in the suit. I think a stay is good for both parties in this case since each has proceedings pending in different courts which they want to learn the outcome of before proceeding further with this case. It matters not the length of the stay now that both parties want stay. Both of them are pleading with the court for some sort of stay. Both would be receiving from the dispensation of this court equal justice in the eyes of the law if I allow both applications.

9. Consequently, I allow the application dated 22/9/2025 in terms of prayers no 2 and 3. I also grant the application dated 9/10/25 in terms of prayers no 2,3, and 4.
10. The costs of both applications shall be in the cause.
11. The matter shall be mentioned on 12/3/2025 for further directions.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 2ND DAY OF DECEMBER 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

