



Casper (Suing as the legal representative of the Estate of Catherine Muthoni Mwangi) v Kahawa Sukari Limited & another; Land Registrar Ruiru (Interested Party) (Environment and Land Case E003 of 2025) [2025] KEELC 8418 (KLR) (1 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8418 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E003 OF 2025
JM ONYANGO, J
DECEMBER 1, 2025**

BETWEEN

PAUL MWANGI CASPER (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CATHERINE MUTHONI MWANGI) PLAINTIFF

AND

KAHAWA SUKARI LIMITED 1ST DEFENDANT

GEOFFREY KIMANI GACHERU 2ND DEFENDANT

AND

THE LAND REGISTRAR RUIRU INTERESTED PARTY

RULING

1. This court was moved by the 2nd Defendant/ Applicant's Notice of Motion application dated 10th July 2025 under Order 43 Rule 1(3) in which the applicant sought the following Orders:
 1. Spent...
 2. That the 2nd Defendant be granted leave to appeal from the order made by the Honourable Lady Justice Jane Onyango on 3rd July 2025.
 3. That the proceedings in this case be stayed pending the determination of the intended appeal.
 4. That the cost of this application be in the cause.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Geoffrey Kimani Gacheru sworn on even date.



3. The applicant asserts that being dissatisfied with the ruling delivered by this Court on 3rd July 2025, he intends to lodge an appeal and has made this application without undue delay.
4. The applicant also avers that it is in the interest of justice that the proceedings be stayed to preserve the substratum of this case pending the determination of the intended appeal.
5. The 1st Respondent, through a replying affidavit sworn by its Managing Director, Stephen B. Mbugua indicates no opposition to the 2nd Respondent's application for leave to appeal.

Issues

6. Having examined the application, the supporting affidavit and the replying affidavit in response to the application and the relevant authorities, the following issues emerge for determination:
 - i. Whether the applicant should be granted leave to appeal
 - ii. Whether a stay of proceedings should be granted

Analysis and Determination

7. Section 75(1) of the *Civil Procedure Act* and Order 43 Rule 1 of the Civil Procedure Rules enumerate the limited categories of decisions from which an appeal lies as of right.
8. In this case, the 2nd Respondent seeks to challenge a ruling that upheld the propriety of the Plaintiff's suit and concluded that no extension of time was required under section 26 of the *Limitation of Actions Act*.
9. That ruling does not fall within the orders appealable as of right, making leave of the Court a necessary prerequisite.
10. The power to grant leave rests with this Court, a power to be exercised not as a matter of routine, but with deliberate care and fidelity to the dictates of justice.
11. In doing so, the Court must guard with vigilance the Applicant's constitutional rights to a fair hearing and to access justice, rights that embrace the opportunity to seek appellate review.
12. Equally, the Court must weigh the swiftness with which the application was made and the potential prejudice that may befall either party should leave be granted or withheld.
13. Justice demands that discretion be neither withheld capriciously nor extended lightly, but applied in a manner that preserves both fairness and the integrity of the judicial process.
14. I take note that the impugned ruling was delivered on 3rd July 2025 and the application for leave to appeal was made on 10th July 2025. No delay can be imputed to the Applicant.
15. In the circumstances, I find that the leave sought is justified in law and equity, and I accordingly grant it.
16. I will now determine whether the prayer for stay of proceedings should be granted. The law on applications for stay of proceedings is well settled and generally provided for under Section 6 of the *Civil Procedure Act*, which directs that where an issue is directly and substantially in dispute between the same parties, another Court ought to suspend its proceedings in respect of that suit.
17. While numerous authorities on stay of proceedings could be cited, it suffices to reference *Global Tours & Travel Limited Vs. Five Continents Travel Limited* [2015] eKLR and *William Odhiambo Ramogi & 2 Others Vs. The Honourable Attorney General & 3 Others* [2019] eKLR.



18. From these authorities, the following principles emerge:
- i. First, there must be an appeal pending before the higher Court;
 - ii. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - iii. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - iv. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - v. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - vi. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
19. In this matter, while the application was filed without delay, the Applicant has offered no substantive justification for the stay of proceedings. Beyond the perfunctory assertion that a stay is “in the interest of justice,” there is no explanation as to why the application was not made to the higher Court, nor any demonstration that the intended appeal raises questions of law or fact that are bona fide and arguable.
20. There is nothing to demonstrate that the appeal would be rendered nugatory in the absence of a stay, nor are there exceptional circumstances warranting such an order.
21. In the absence of these essential elements, the application fails to satisfy the stringent requirements established by authority for the grant of a stay of proceedings.
22. Accordingly, having considered the law, authorities and the circumstances of this case, I find that the Applicant has not demonstrated the requisite grounds for the grant of a stay of proceedings.
23. In the premises, I hereby make the following Orders:
- i. The 2nd Defendant is granted leave to appeal from the order made by the Honourable Lady Justice Jane Onyango on 3rd July 2025.
 - ii. The application for stay of proceedings is declined.
 - iii. Costs shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED, AT THIKA THIS 1ST DAY OF DECEMBER 2025

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J. M. ONYANGO
JUDGE



In the presence of:

1. Ms Chege for the 2nd Defendant/Applicant
2. Ms Aisha for Mr Motari for the Interested Party

Court Assistant: Hinga

