



REPUBLIC OF KENYA



KENYA LAW
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Oduori & another v Gichira & another (Environment and Land Appeal E065 of 2025) [2025] KEELC 8410 (KLR) (2 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E065 OF 2025**

JA MOGENI, J

DECEMBER 2, 2025

BETWEEN

COLLINS AWORI ODUORI 1ST APPELLANT

PRISCILLA NYANCHORA OGAMBA 2ND APPELLANT

AND

JOYCE MUTHONI GICHIRA 1ST RESPONDENT

DANIEL GITAU KURIA 2ND RESPONDENT

RULING

1. The Appellants moved the Court through the Notice of Motion dated 19/06/2025 seeking for the following prayers:-
 1. Spent.
 2. That pending the hearing and determination of the appeal, the Honorable Court be and is hereby pleased to issue an order of stay, staying any proceedings before the Thika Chief Magistrates Court in MCELC/64/2018: Collins Awori Oduori And Priscilla Nyanchora Ogamba Vs Joyce Muthoni Gichira And Daniel Gitau Kuria.
 3. That in the alternative to (2) above, pending the hearing and determination of the present application, the Honorable Court be and is hereby pleased to issue an order of stay, staying and any proceedings before the Thika Chief Magistrates Court in MCELC/64/2018: Collins Awori Oduori And Priscilla Nyanchora Ogamba Vs Joyce Muthoni Gichira And Daniel Gitau Kuria.
 4. That costs be provided for.



2. The said application is based on the five (5) grounds on its face, and supported by the Affidavit of Fredrick Ogamba Ramogi who holds a general Power of Attorney for the suit properties, sworn on even date. He deposes, he holds a general Power of Attorney for the Appellants who live in the United States of America (USA). A copy of the Power of Attorney is provided on pages 17 to 19 as annexure 'FOR-1'.
3. The Applicant attributes the failure to attend Court to the advertent mistake of Counsel and although he filed an application before the trial Court for Review dated 10/12/2024, the lower Court dismissed the application for Review through its Ruling dated 15/05/2025.
4. The Ruling upheld the close of the Appellant/Applicant's case without having been heard and proceeded with the 1st Respondent's Counter-Claim and this is what made the Appellant/Applicant lodge the substantive appeal and at the same time the instant application.
5. The Appellant/Applicant alleges that the lower Court also refused to allow the Appellants' Counsel the right to cross-examine the 1st Respondent on her Defence and Counter-claim.
6. The Appellant/Applicant contends that the Respondent's case was to come up for hearing on 10/12/2024 but she never attended Court yet the Court adjourned the matter as evidenced by the extract from the CTS platform on pages 20 and 21 marked as annexure 'FOR-2'.
7. That when the Court declined to allow the Appellants' Counsel to cross-examine the 1st Respondent it reluctantly allowed the Appellants to make submissions on 15/7/2025 after the Appellants' Counsel's pleas.
8. In order to file for the appeal after the lower Court's Ruling on 15/05/2025, the Counsel for the Appellants sought availability of the physical Court file for perusal vide a letter dated 26/05/2025 but the same was unavailable the letter is annexed as 'FOR-4'. The Appellant avers that the file of the lower Court was not traceable after the Court delivered the Ruling on 15/05/2025 declining to reopen the Appellants' and was only found on 17/06/2025 over 30 days and this was after expiry of the 30 days allowance within which the Appellants should have filed an appeal.
9. The Appellants further content that they noted the delay of re-emergence of the file and opted to institute the appeal by filing the Memorandum of Appeal on 13/06/2025 to forestall the possibility of not filing the appeal on time.
10. That whereas the 1st Respondent failed to attend Court on 10/12/2024 and her case was not dismissed the Appellants have suffered by having their case dismissed for non-appearance. The Appellants aver that the lower Court has been inflexible in applying the standards on their part considering that non-attendance was non-habitual and on a day the Court was on transfer.
11. That while the Appellants respect the fact that the Court has discretion on whether to allow Review or not, Article 50 of *the Constitution* mandates the Court to allow fair hearing including parties being allowed to have their suits decided on merit. So, the Court's discretion to close and dismiss the Appellants' case for want of appearance should exercise sparingly in contexts like this where non-appearance has been shown to be inadvertent and non-habitual/repetitious.
12. The Appellants have averred that they filed an Appeal, that raises serious arguable issues of law and fact and has high chances of success. It is their averment that they filed the instant application without delay, and prays for it to be allowed.



13. In response the 1st Respondent filed a Replying Affidavit sworn on 2/07/2025 and opposed the application, in which she inter alia deposed that the application is an abuse of the Court process, not deserving attention of the Court and that it is scandalous, frivolous and deserving dismissal.
14. The content that the Appellants/Applicants have a habit of not attending Court and that on 27/08/2024 the matter had a hearing date and the Applicants' Counsel was absent. This being the case the Respondent avers that his Counsel sought for dismissal of the Applicants' suit and set a date for the hearing of the Counter-claim.
15. That despite the Applicants' Counsel being served with a hearing notice dated 29/08/2024 he never attended Court and the Respondent testified and closed their case and Judgment date was given.
16. Further that the Applicants were aware of all dates scheduled for hearing since they have not produced any contrary evidence. That since filing the suit in 2018 the Applicant has not made effort to prosecute the suit to conclusion. Additionally, the 1st Respondent avers that cases belong to the litigants and not their Counsel.
17. That Equity aids the vigilant and not the indolent and this case the Applicants have acted indolently by not prosecuting their case yet they are the ones who sued the Respondents.
18. At the last Court's attendance on 17/07/2025, the Court gave directions for parties to file their written submissions.
19. The Appellants filed their submissions dated 24/07/2025 and submitted that they have met the threshold for granting of stay of proceedings as stipulated in the law Order 42 Rule 6(1). The Appellants referred to Article 50 on the right to be heard, Article 159(2) of *the Constitution* in their submissions. They also referred to Order 42 Rule 24. At the same time they relied on Njuguna v Wanyoike (Environment and Land Miscellaneous Application E003 of 2024 [2024] KEELC 4372 (KLR) (28 May 2024) (Ruling), Global Tours & Travel Limited vs Five Continents Travel Limited [2015]eKLR and the case of William Odhiambo Ramogi & 3 Others v Attorney General & 6 Others; Muslims for Human Rights & 2 Others(Interested Parties) [2020]eKLR. The Court keenly read and considered the Applicants' submissions in its Judgment.
20. The Respondent did not file their submissions.

Issues for Determination by the Court

- a. Whether there is a competent appeal before this Court.
- b. Whether the Appellants have met the threshold for stay of proceedings to issue at this interlocutory stage.
- c. Who bears the costs of the suit?

Whether there is a competent appeal before the Court?

21. The Memorandum of Appeal filed in Court is dated 13/06/2025 filed one month four (4) days after the delivery of the Ruling on 15/05/2025. I do not consider this to be undue delay.
22. There is therefore a competent appeal on record which makes it possible for the Applicants/Appellants to file the application herein.



Whether the Appellants have met the threshold for stay of proceedings to issue at this interlocutory stage.

23. The law on stay of proceedings is provided for in Section 6 of the *Civil Procedure Act* to the effect that where an issue is directly and substantially in issue in proceedings between the same parties, another Court ought to stay its proceedings in respect of such suit. Stay of proceedings is further alluded to under Order 42 Rule 6(1).
24. The Court has carefully considered the grounds on the application, Affidavit evidence, submissions by the learned Counsel and come to the following findings: In the case of *Global Tours and Travel Ltd versus Five Continents Travel Ltd (2015) eKLR* the Court stated as follows about applications for stay of proceedings:

“ ... 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. Such discretion is unlimited save that by virtue of its character as a judicial discretion; it should be exercised rationally and not capriciously or whimsically. 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 the order. And in considering those matters, it should bear in mind such factors as the need for the expeditious disposal of the case. 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 timeously.”

25. Also in *Halsbury’s Laws of England*, 4th Edition, Volume 37 page 330, the learned authors state:

“ 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 all 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 shown or 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 the case.”

26. It is not in dispute that the Applicants have filed an Appeal vide the Memorandum of Appeal dated the 13/06/2025 in which he has impugned the decision of the lower Court delivered on 15/05/2025 on grounds interalia that the trial Court failed to allow the Plaintiff to testify and also that the Plaintiffs’ Counsel was not allowed to cross-examine the Respondent in the Counter claim hearing, limiting the Plaintiff to only filing written submissions to enable the Magistrate proceed and deliver the Judgment.
27. Such an averment touch on the right to be heard and the Court finds that the Appeal is not one that is slothful and warrants the Court to hear the parties. For the orderly administration of justice, it is



met that the stay orders be granted to avoid confusion and conflicting decisions that may bring the dignity of the Court to disrepute. Furthermore, judicial time will be deployed efficiently if one matter is heard at a time.

28. Also, of importance to note is that the Appeal itself will not deal with the merits of the pending suit.
29. The Court is guided by the decision in *Kenya Wildlife Service v James Mutembei* [2019] eKLR where it was held that: -

“... Stay of proceeding 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...”.
30. As can be seen from the above decision, stay of proceedings requires judicial discretion while balancing the interests of the parties. The decision of the lower Court not to allow Review despite the Appellants/ Applicants not having had their day at the seat of justice means that they never got the opportunity to litigate their case.
31. For the Court to grant stay of proceedings, the Appellant/ Applicant ought to have shown that it has an arguable Appeal such that if stay of proceedings is not granted the Appeal will be rendered nugatory.
32. The prayer for stay of proceedings is an equitable relief. An Applicant must have come to Court with clean hands. It is therefore important for the Court to consider whether or not the application for stay of proceedings has been filed expeditiously and in good faith not merely to frustrate the wheels of justice from rolling smoothly and freely.
33. The Court is aware that 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 all reasonable doubt ought not to be allowed to continue. This is a power which, as already stated herein above ought to be exercised sparingly, and only in exceptional cases.
34. The Appellant has demonstrated that the application is not frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity.
35. Further, the Court has noted that the Ruling the Appellants intended to appeal was delivered on 15/05/2025. The Memorandum of Appeal is dated 13/06/2025, while the present application is dated 19/06/2025. One (1) month and four (4) days could not be said to have been inordinate. This Court was thus satisfied that the present application was filed without any delay.
36. Whereas the Respondent had submitted that the application herein was an abuse of the Court process, frivolous and vexatious, this Court is of the view that in the event it did not grant an order for stay of proceedings and the Appeal herein was heard and was successful, the proceedings in the lower Court would have been rendered unnecessary, even though an appropriate order for costs could have been made to remedy that.

Who will bear the costs?

37. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award that a party is given after the conclusion of any legal action, process or proceedings of any litigation.



The provision of Section 27(1) of the Civil Procedure Act holds that costs follow the events. By event it means the results or outcome of the said legal action, process or proceedings thereof. (See the Court of Appeal cases of “Cecilia Kahururu Ngayo -Versus- Barclays Bank of Kenya Limited (2016) eKLR and Republic -Versus- Rosemary Wairimu, Ex-Parte Applicant -Versus- Ihururu Dairy Farmers Co-operative Society Ltd (2014) eKLR the Court held that:

“The issue of costs is the discretion of the Court as provided under the above section. The basic rule on attribution of costs is that costs follow the event It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

38. I will however direct that the costs shall be in the cause.

Disposal Orders

39. For the above reason I exercise my discretion in favour of the Applicants and grant the orders sought in the application with the following terms;

- i. Pending the hearing and determination of the Appeal, the Honorable Court hereby issues an order of stay staying any proceedings before the Thika Chief Magistrates Court in MCELC/64/2018: Collins Awori Oduori And Priscilla Nyanchora Ogamba Vs Joyce Muthoni Gichira And Daniel Gitau Kuria.
- ii. That costs shall be in the cause.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 2ND DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Sagini for the 1st and 2nd Appellants

Mr. Kanyi for the 1st Respondent

2nd Respondent – Absent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

