

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO E013 OF 2023**

**MARTIN RUIGU:.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**NICHOLAS NJOROGE NJENGA:.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**JENNIFER WANGUI NJENGA:.....3<sup>RD</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**SOLOMON K. TANUI:.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**WILSON I. KIMANI:.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**JIMMY KIMARU:.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**MOSES K. SAINA:.....4<sup>TH</sup> DEFENDANT/APPLICANT**

**REGISTRAR OF TITLES (NAIROBI REGISTRY):...5<sup>TH</sup>**

**DEFENDANT**

**THE HON. ATTORNEY GENERAL:.....6<sup>TH</sup> DEFENDANT**

**RULING**

The application is dated 19<sup>th</sup> January 2025 and is brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and Article 159(2) of the Constitution of Kenya 2010 seeking the following orders;

1. The Honourable Court do issue a stay of proceedings pending the hearing and disposal of the application No. COACAPPL E559 of 2024 in the Court of Appeal.

## 2. Costs be provided for. .

It is grounded on the annexed Affidavit of Wilson Irungu Kimani and on grounds that the Applicants filed an application No COACAPPL E559 of 2024 in the Court of Appeal. The Applicants are seeking enlargement of time to file Notice of Appeal out of time. The application was certified urgent and directions given. The Applicants are waiting for Ruling of the application. The Appeal Court has not given directions on the time the Ruling will be delivered. That the Applicants are seeking stay of proceedings pending the disposal of the said application. It will be prejudicial for the Applicants to proceed with the case herein while simultaneously the Appellate Court is seized of the matter by way of the application pending before it. The Respondents will not suffer prejudice if the orders sought are granted.

The Respondent's submitted that the Court of Appeal is yet to determine the said application and this matter has not been stayed. That there is nothing from the court of appeal that interferes with the proceedings of this court.

I have carefully considered the instant application, replying affidavit and submissions by the parties. This application is for an order of stay of proceedings in this case pending the hearing and determination of COACAPPL E559 of 2024. Stay of proceedings for whatever reason 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 very strict. In the case of Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 the court stated that;

*“As I understand the law, 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 .... 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 or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, 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 expeditiously”*

Stay of proceedings has been discussed in the following passages in Halsbury’s Law of England, 4<sup>th</sup> Edition. Vol. 37 page 330 and 332, 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 proceeding 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.”*

The provisions of *Article 159(2)(a)(b)(c) and (d)* of the *Constitution of Kenya* as read with *Sections 1A and 1B* of the *Civil Procedure Act, Cap 21* enjoin this court to foster and facilitate the overriding objective of the Act to render justice to parties in all Civil Proceedings in a just, expeditious, proportionate and affordable cost to parties. I have perused the court file in ELC No. 13 of 2023 and find that on the 3<sup>rd</sup> October 2024 the court did dismiss the 1<sup>st</sup> to 4<sup>th</sup> Defendants’ application dated 11<sup>th</sup> March 2024 to strike out the suit for being res judicata and allowed the Defendants to file their defences within 21 days. The Applicants filed an application No COACAPPL E559 of 2024 in the Court of Appeal dated 28<sup>th</sup> October 2024. The Applicants are seeking enlargement of time to file Notice of Appeal out of time. The application was certified urgent and directions given. The Applicants are waiting for Ruling of the application. The Appeal Court has not given directions on the time the Ruling will be delivered. I find that there are no orders from the Court of Appeal staying the matter in this court and I see no reason to. This is forum shopping after the Applicant failed to get the orders from the Court of Appeal. It is my considered opinion that it would be not be in the interest of justice to exercise the court’s

discretion and grant stay of proceedings as this matter was filed way back in 2023. I find that the application is not merited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 16<sup>TH</sup> DAY  
OF DECEMBER 2025.**

**N.A. MATHEKA**

**JUDGE**