



**Mwakilago aka Hamza Karisa Banda v Rubeya; Yusuf & another (Proposed Interested Parties)  
(Environment and Land Case 239 of 2020) [2025] KEELC 5620 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5620 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 239 OF 2020  
SM KIBUNJA, J  
JULY 30, 2025**

**BETWEEN**

**KARISA BANDA MWAKILAGO AKA HAMZA KARISA BANDA .... PLAINTIFF**

**AND**

**SAID RUBEYA ..... DEFENDANT**

**AND**

**ISSA ABDALLA YUSUF ..... PROPOSED INTERESTED PARTY**

**ASATBHAI ISSA ABDALLA ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The plaintiff filed the application dated the 4<sup>th</sup> April 2025 seeking for orders inter alia that the order of 25<sup>th</sup> November 2022, staying the suit awaiting the determination of ELCC No. 72 of 2022, be lifted and or vacated to enable this suit be set for pre-trial conference. The application is premised on the six (6) grounds on its ace and supported by the affidavit of the plaintiff sworn on 4<sup>th</sup> April 2025, in which he among others deposed that as ELCC No. 72 of 2022 was been determined on 29<sup>th</sup> January 2025.
2. The affidavit of service sworn on 7<sup>th</sup> April 2025, and filed on 26<sup>th</sup> June 2025 confirms that the application and order issued on 5<sup>th</sup> April 2025 were served on 7<sup>th</sup> April 2025 upon counsel for the defendant. When the application came up for hearing on 3<sup>rd</sup> July 2025, only counsel for the plaintiff had attended court, and he moved the court to grant the orders sought. The court fixed the application for ruling today.
3. I have perused the record and indeed confirmed no reply has been filed by the respondent. I have also perused the court's ruling of 29<sup>th</sup> January 2025 and extracted order issued on 4<sup>th</sup> February 2025 in ELCC NO. E072 OF 2022, and confirmed that suit was struck out upon the 1<sup>st</sup> defendant's application



dated 16<sup>th</sup> July 2024 being upheld. Indeed, therefore, ELCC NO. E072 OF 2022, has been decided/ determined.

4. I have also perused the extracted court order issued on 25<sup>th</sup> November 2022, and the court record and confirmed that the stay order was issued on 22<sup>nd</sup> November 2022 to await the hearing and determination of ELCC NO. E072 OF 2022. That now that ELCC NO. E072 OF 2022, has been determined, it is only fair for that order to be lifted and or vacated to allow this suit to be processed to its logical conclusions.
5. That though under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya costs follow the events unless where there are good reasons upon which to order otherwise, in this application, I am of the view the costs should abide the outcome of the suit, as the defendant did not file any replies in opposition.
6. That in view of the above conclusions, the court finds and orders as follows in respect of the notice of motion dated 4<sup>th</sup> April 2025:
  - a. That the said application has merit and is allowed.
  - b. That the stay order of 22<sup>nd</sup> November 2022 and issued on 25<sup>th</sup> November 2022, is hereby vacated to enable this suit be prosecuted to its logical conclusion.
  - c. The costs in the application to abide the outcome of the suit.
  - d. That the order on the CTS of 29<sup>th</sup> January 2025, closing this file is set aside on the court's own volition as it was meant for only ELCC NO. E072 OF 2022.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 30<sup>TH</sup> DAY OF JULY 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Plaintiff : Mr. Oddiaga

Defendant : No Appearance

Proposed Interested Parties : No Appearance

Shitemi-court Assistant.

