

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**CIVIL SUIT NO. 345 OF 2019**

JANE RUGURU  
GATHURU.....PLAINTIFF/RESPONDENT

**-VERSUS-**

PETER GATHURU CHEGE.....1<sup>ST</sup>  
DEFENDANT

REGINA NYAMBURA.....2<sup>ND</sup>  
DEFENDANT/APPLICANT

ERNEST MWANIKI.....3<sup>RD</sup>  
DEFENDANT

THE CO-OPERATIVE BANK  
OF KENYA LIMITED.....4<sup>TH</sup>  
DEFENDANT

CHIEF LANDS REGISTRAR.....5<sup>TH</sup>  
DEFENDANT

THE ATTORNEY GENERAL.....6<sup>TH</sup>  
DEFENDANT

**RULING**

1. Before this court for determination is the notice of motion dated 24<sup>th</sup> March, 2025 filed by the 2<sup>nd</sup> defendant/applicant, and it expressed to be brought under **Sections 1, 1A and 6** of the **Civil Procedure Act** and **Order 51** of the **Civil Procedure Rules**, seeking the following orders:

1. ***Spent.***

2. ***The honourable court be pleased to stay further proceedings in this matter pending the hearing and determination of this application.***

**3. Pending the hearing and determination of the Civil Appeal Case No.23 of 2020 an interim conservatory order does issue staying proceedings in the Environment and Land Court in Civil Suit No. 345 of 2019.**

**4. That the cost and incidental to the application be provided for.**

2. The application is anchored on the six grounds set out on its face and further supported by the affidavit of the 2<sup>nd</sup> defendant/applicant sworn on 25<sup>th</sup> March, 2025. The 2<sup>nd</sup> defendant/applicant deposed that her husband Ngonya wa Gakonya (deceased) being the purchaser of the property known as Dagoretti/ Riruta/1648, the suit land, executed an agreement dated 19<sup>th</sup> December, 1979 with the 1<sup>st</sup> defendant being the vendor, and that her late husband delivered the entire purchase price to the 1<sup>st</sup> defendant as contracted.
3. The 2<sup>nd</sup> defendant/applicant further deposed that her children and husband (during his lifetime) have been in continuous occupation of the suit premises since 1979. Further, that she asserted her beneficial interest over the suit land being her late husband's property, and that at the time of execution of the sale agreement, the suit land formed part of land parcel number Dagoreti/Riruta/944 whose title deed was not registered in the 1<sup>st</sup> defendant's name. She deposed that the sub-division giving

rise to title number Dagoreti/Riruta/1648 took place sometimes in 2005.

4. The 2<sup>nd</sup> defendant/applicant deposed that the 1<sup>st</sup> defendant executed an agreement dated 6<sup>th</sup> November, 2013 with the 3<sup>rd</sup> defendant, disregarding the agreement dated 19<sup>th</sup> December, 1979. Subsequently, that the 1<sup>st</sup> defendant transferred the suit land to the 3<sup>rd</sup> defendant through a transfer executed on 23<sup>rd</sup> January, 2014. She deposed that she the challenged the sale agreement dated 6<sup>th</sup> November, 2013 in Court in **ELC Case No. 1524 of 2014**, resulting in a judgment delivered on 8<sup>th</sup> August, 2019 that was unfavourable to her. Thereafter, she lodged an appeal before the court of appeal being **Civil Appeal 23 of 2020**, which appeal is awaiting determination.
5. The 2<sup>nd</sup> defendant/applicant deposed that in the judgment, the court struck out her claim on technicalities and failed to resolve the substantive issues placed before it in the suit. She urged the court to stay the subject proceedings as they touch on her rights which rights are currently the subject of consideration by the Court of Appeal. She annexed a memorandum of appeal dated 21<sup>st</sup> January, 2020 lodged before the Court of Appeal at Nairobi.

6. The 4<sup>th</sup> defendant/respondent filed its grounds of opposition dated 16<sup>th</sup> June, 2025 challenging the instant application on the following grounds: -

- 1. That the application does not meet the evidentiary threshold for granting the orders sought as the facts and/or grounds upon which the application is anchored and/or premised do not warrant granting the orders as prayed for.**
- 2. That the Court of Appeal Civil Appeal No. 23 of 2020 is a non-starter as the 2<sup>nd</sup> defendant/applicant does not have any proprietary rights to bring forth the said suit.**
- 3. That the application is a delaying tactic aimed towards derailing the present suit as the grounds therein are a spurious assembly of allegations choreographed by the 2<sup>nd</sup> defendant/applicant to suit her narrative for the grant of the orders.**
- 4. That the application as presented is a wanton abuse of the court process, scandalous, frivolous, fundamentally incurable, misconceived, defective, vexatious and intended to embarrass the court and the legal process.**
- 5. That the application as presented is not legally tenable and should be dismissed with costs.**

7. The application was canvassed by way of written submissions. The 2<sup>nd</sup> defendant/applicant filed her written submissions dated 22<sup>nd</sup> July, 2025. She submitted that in view of the appeal pending

before the Court of Appeal, this court ought to grant the reliefs sought herein to avoid the possibility of a multiplicity of suits over the same subject matter being the suit land. Further, that the suit giving rise to **Civil Appeal 23 of 2020** namely **ELC Case No. 1524 of 2014** preceded the subject cause which was commenced in 2019, by about five years; therefore, the latter ought to be stayed awaiting the determination of the appeal.

8. The 2<sup>nd</sup> defendant/applicant submitted that the parties and the issues in contest in subject cause and in **Civil Appeal 23 of 2020** are similar; for that reason, the court ought to stay these proceedings on grounds of *sub-judice*. Guidance was placed in the cases of **Kenya National Commission on Human Rights v Attorney-General, Independent Electoral and Boundaries Commission and 16 others (interested Parties) 2020 KESC 54 (KLR)** and, in **Mwaita V Attorney-Gneral & Another KEELC 4502 (KLR)**.
9. The 4<sup>th</sup> defendant/respondent filed its written submissions dated 29<sup>th</sup> July, 2025. The 4<sup>th</sup> defendant/respondent submitted that this court through its decision issued on 8<sup>th</sup> August, 2019 found the claim in **ELC Case No. 1524 of 2014** to be statute-barred pursuant to the provisions of the **Section 7 of the Limitation of Actions Act**, which holding deprives the 2<sup>nd</sup> defendant/applicant of any proprietary rights over the suit land and renders **Civil**

**Appeal 23 of 2020** a non-starter. The 4<sup>th</sup> defendant/respondent relied on the case of **William Odhiambo Ramogi & 3 Others vs. Honourable Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR** to support the argument that the instant application fails to satisfy the evidentiary threshold for the grant of the order of stay of proceedings pending appeal.

10. It was further submitted that the 2<sup>nd</sup> defendant/applicant originated the instant application when the suit had already been confirmed for hearing and parties ready to have their respective cases heard, which is a delaying tactic and amounts to an abuse of the court process.
11. I have considered the application, the grounds of opposition and the respective submissions filed as well as the authorities cited. The issue for determination is *whether the application is merited*.
12. It is trite that stay of proceedings is a “grave of judicial action” requiring a higher threshold compared to a stay of execution of judgment, due to its impact on the right to access justice. See the decision of the court in **In Re Rai Plywoods (K) Ltd [2004] KEHC 67 (KLR)**. The court is persuaded to adopt the preceding position by the dictum in **William Odhiambo Ramogi & 2**

**Others vs. the Honourable Attorney General & 3 Others**

[2019] eKLR, where the court reasoned, *inter alia*:-

***“b. 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[.]”***

13. In the upshot, the court is satisfied that the application before it ought to have been filed before the Court of Appeal which is the appropriate forum for such stays; and, neither this court nor the high court which is a court of equal jurisdiction can override this hierarchy.
14. In addition, it is noteworthy that the application before the court is dated 24<sup>th</sup> March, 2025 while the memorandum of appeal is dated 21<sup>st</sup> January, 2020. The 2<sup>nd</sup> defendant/applicant moved the Court of Appeal in 2020 following the delivery of the impugned decision delivered on 8<sup>th</sup> August, 2019. The original suit upon

which the instant application is founded was originated in 2019, predating the appeal lodged before the Court of Appeal.

15. In view of the foregoing, this court finds that the 2<sup>nd</sup> defendant/applicant has failed to provide any reasons, cogent or otherwise, for the delay of approximately 5 years and 2 months in terms of seeking a stay of proceedings in the subject suit, awaiting the determination of the appeal.
16. The notice of motion dated 24<sup>th</sup> March, 2025 lacks merit and it is hereby dismissed. Costs in the cause.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 19<sup>TH</sup> DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
19/01/2026.**

***In the presence of:***

*Ms. Vena Aron - Court assistant*

*Mr. Gatimu holding brief for Ms. Kwamboka for the 4<sup>th</sup> Defendant*

*No appearance for the Plaintiff*

*No appearance for the 5<sup>th</sup> and 6<sup>th</sup> Defendants/Respondents*