



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND AT NAIROBI
ELCA NO E223 OF 2025

ABDULLAHI DAHUR ABDI
APPELLANT/APPLICANT

-

VS

DENIS KIMANI MUCHAI

-

RESPONDENT

RULING

**(In respect of the Appellant's/ Applicant's application dated
31/10/25)**

1. Before the court for determination is the Applicant's Notice of Motion dated 31/10/25, seeking, in the main, a stay of proceedings in CMCELC No E146 of 2024 pending the hearing and determination of the appeal, as well as costs of the application.
2. The application is founded upon the grounds attached thereto, together with the Supporting Affidavit of the Applicant sworn on 31/10/25, wherein the Applicant succinctly outlined the following: the subject land in this matter, LR No 15400, is involved in ongoing litigation under this appeal; MCELC E146 of 2024; and ELC 393 of 2008. Moreover, it is

contended that no final resolution can be attained in ELC E146 of 2025 while the aforementioned suits remain unresolved. Additionally, it is observed that MCELC No E146 of 2025 is sub judice in relation to ELC 393 of 2008, which is pending hearing and determination before the superior court. A substantial controversy exists regarding the creation of LR No 15400 and its subsequent subdivisions, which are claimed to be subdivisions.

3. Furthermore, the Applicant states that his Application dated 12/6/2025, seeking a stay of proceedings in MCELC No E146 of 2025, was dismissed on 26/9/25, thereby initiating the present appeal currently pending before this court. He urges that the court grant the prayers pending the hearing and determination of the appeal.
4. The application is opposed by the Respondent vide the Replying Affidavit sworn on 5/11/25 in which he deponed that the application is a grossly an abuse of the court; lacking in merit; malicious and is designed to drag the case in court while the Applicant continues his unabated contempt of court orders.
5. Furthermore, the parcel of land in question, which is the subject of this appeal, differs from the other parcels of land referenced by the Applicant. The Applicant is neither a party to ELC 393 of 2008 nor to PET No 47 of 2011; consequently, the application has been filed with the intent to paralyse the proceedings in MCELC No. E146 of 2025. The Applicant has been cited for habitual submissions of applications aimed at obstructing hearings and unduly prolonging litigation in this matter. Several cases were cited in which the Environment and Land Court refused to stay proceedings and instead proceeded to hear and conclude the cases. The ruling by the trial court magistrate was thoroughly reasoned, and the court was urged to dismiss the application.
6. The parties have submitted written submissions which I have reviewed and duly considered. Only the Applicant has complied, whereas the Respondent has failed to do so despite the court's directives.

7. The key issue for determination is whether the Application is merited.
8. The law regarding the stay of proceedings pending appeal is outlined in Section 6 of the Civil Procedure Act, which states that if an issue is directly and substantially in dispute between the same parties, another court should stay its proceedings concerning such a suit.
9. The **Halsbury's Law of England 4th Edition Vol. 37 pages 330 and 332** states 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.

“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 show not 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.”

10. What I understand from this Application is that the main appeal is challenging the trial court’s dismissal of an Application for orders staying proceedings in MCELC No E146 of 2025. I must caution myself at this juncture from venturing into the merits of whether or not to grant a stay, as those orders are at the gist of the appeal. That said, in the meantime, I will allow the Application to avoid parallel proceedings and enable the court to hear and determine the appeal; avoid.
11. In the end I allow the Application on terms;

- a. The Notice of Motion dated 31/10/25 is hereby allowed, in the interim, for a period of 90 days, during which the Appellant/Applicant is expected to have expeditiously prosecuted his appeal.
 - b. The Respondent shall have the costs in any event.
12. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH DAY OF JANUARY 2026 VIA MICROSOFT TEAMS.

**J G KEMEI
JUDGE**

Delivered online in the presence of;

1. Mr Omondi for the Appellant
2. Mr Kithure HB for Mr Kirimi
3. C/A - Ms. Yvette Njoroge