

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CIVIL SUIT NO. E076 OF 2022

TIMAU AGRO INDUSTRIES LIMITED..... PLAINTIFF

VERSUS

BAYSHORE LIMITED.....1ST DEFENDANT
AFRICAN GAS AND OIL COMPANY

LIMITED (AGOL).....2ND
DEFENDANT
ABDULSWAMAD ABEID SAID T/A

A.A SAID & CO. ADVOCATES.....3RD DEFENDANT

THE LAND REGISTRAR, MOMBASA.....4TH DEFENDANT

THE CHIEF LAND REGISTRAR.....5TH DEFENDANT

RULING

1. By the Notice of Motion dated 5th May 2025, the Land Registrar Mombasa and the Chief Land Registrar (the Applicants) pray for the following:

1) Spent;

2) Spent

3) That there be a temporary stay of proceedings and the consequent orders of this court issued on 28th March 2025 pending the hearing and determination of the Court of Appeal;

4) That this Honourable Court be pleased to stay the Orders of the Ruling delivered on 28th March, 2025 together with all consequential orders arising therefrom pending the hearing and determination of the Intended Appeal;

5) Spent; and

6) That the costs of this application be in the cause.

2. The application is supported by an Affidavit sworn by Mike Sego Mnyarkiy, the Principal Land Registrar Mombasa County and a Further Supplementary Affidavit sworn by Joseph Mwela, the Chief Legal Officer of the 1st Defendant and is premised inter alia on the grounds:

i. That on 28th March, 2025, Honorable Justice Naikuni dismissed the Applicants' Preliminary Objection dated 25th October, 2025;

ii. That the Applicants are aggrieved by the said Ruling and have promptly filed a Notice of Appeal;

- iii. That this Court is yet to supply the Applicants with a certified copy of the typed proceedings and Ruling to enable them to file a Memorandum and Record of Appeal;**
- iv. That the intended Appeal challenges the jurisdiction of this Honourable Court to entertain the Plaintiff's suit, which is fixed for hearing on 26th May 2025;**
- v. That the Applicants are apprehensive that should this trial Court continue with the proceedings, the said Appeal shall be rendered nugatory;**
- vi. That the Defendants were denied their rights to fair hearing defeating the rules of natural justice (sic); and**
- vii. That it would be in the interest of justice to allow this Application.**

3. Timau Agro Industries Limited (the Plaintiff/Respondent) is opposed to the application. In a Replying Affidavit sworn on its behalf on 18th June 2025 by its Managing Director Lawrence Muriithi Mbabu, the Respondent avers that the

application is devoid of merit, frivolous, vexatious and an abuse of the court process.

4. The Respondent asserts that its claim against the 4th and 5th Defendants is on account of their acts of registering the transfer of the suit property from the Plaintiff to the 1st Defendant and subsequently from the 1st Defendant to the 2nd Defendant without the requisite stamp duty having been paid.
5. The Respondent avers that the application is a ploy by the Applicants to delay the final determination of this matter and further that it is against the interest of justice and fairness not only to the Plaintiff but also to the general public for these proceedings to be stayed.
6. I have carefully perused the 4th and 5th Defendants application as well as the response thereto by the Plaintiff. I have similarly perused and considered the rival submissions as highlighted by the Learned Counsels representing the parties.
7. By their application before the Court, the Land Registrar Mombasa and the Chief Land Registrar (the 4th and 5th

Defendants respectively) pray for both a stay of the proceedings herein as well as a stay of execution of the orders issued by this Court on 28th March 2025. It is the Applicants case that the Ruling is adverse to their interests and that they have promptly filed a Notice of Appeal against the same.

8. The Plaintiff is opposed to the application. It is the Plaintiff's case that the application is a ploy by the Applicants to delay the final determination of the suit and that it would be against the interest of justice and fairness to have the proceedings stayed.
9. The power of the court to stay proceedings and/or execution of an order or decree is granted under Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules which provide that:

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from,

the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under subrule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

10. As it is were, a decision to stay or not stay proceedings is a matter of discretion on the part of the Court which discretion ought to be exercised judiciously and on sound grounds. As Ringera J., (as he then was) stated in ***Re Global Tours &***

Travels Limited (Nairobi High Court Winding Up Case No. 43 of 2000):

“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”.

11. That was the same position taken in the case of ***Kenya Wildlife Service -vs- James Mutembei (2019) eKLR*** where the court went on to quote Halsbury’s Laws of

England, 4th Edition Vol. 37 Page 330 and 332, where it is stated 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, 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”.

12. In the matter herein, the 4th and 5th Defendants have asked the Court to stay proceedings in this matter pending the hearing and determination of an intended Appeal following a dismissal of their Notice of Preliminary Objection dated 25th

October 2024, in the Ruling delivered by the Honorable Justice Naikuni on 28th March 2025.

13. It is the said Defendants' case that the Preliminary Objection went to the jurisdiction of this Court to hear this matter and that if the Court proceeds to hear the matter they stand to suffer great prejudice.
14. It was however not clear to me what prejudice the two Applicants stood to suffer if the suit herein proceeds to hearing. From a perusal of the record, on 30th October 2024, the Court granted all the Defendants time to file their respective Statements of Defence to the Plaintiff's Amended Originating Summons dated 27th September 2024. The 4th and 5th Defendants have to date not filed any Statement of Defence.
15. From a perusal of the pleadings filed herein by the Plaintiff and the other Defendants, it was apparent that the main dispute was between the Plaintiff and the 1st, 2nd and 3rd Defendants given the circumstances under which the suit property was transferred from the Plaintiff's name to the 3rd Defendant. It is apparent from those pleadings that the 4th

and 5th Defendants as the Land Registrar and the Chief Land Registrar respectively have only been sued on account of the act of registering the transfers allegedly without stamp duty having been paid.

16. I am not persuaded that in those circumstances the two Defendants stand to suffer any prejudice to warrant a stay of these proceedings. I am also not persuaded that the Plaintiff's claim is frivolous and/or that the same is manifestly groundless to warrant its stay.
17. On the same grounds, I was not persuaded that the two Applicants had demonstrated that they stood to suffer any substantial loss to warrant an order of stay of execution. On the contrary, it was clear to me that their Motion dated 5th May 2025 was not only frivolous and vexatious but that the same was filed in abuse of the Court process.
18. The Motion dated 5th May 2025 is accordingly dismissed with costs to the Plaintiff.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 29th day of January, 2026.

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms. Grace Ndinda Advocate for the Plaintiff/1st Respondent
- c) Mr. Ogendo Advocate for the 1st Defendant
- d) Mr. Busieka holding brief for Mr. Oloo Advocate for the 2nd Defendant
- e) Mr. Muriithi Advocate for the 3rd Defendant
- f) Mr. Kemei Advocate for the 4th & 5th Defendant/Applicant