



Magara v Embakasi Ranching Company & 2 others (Environment and Land Appeal E088 of 2025) [2026] KEELC 563 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEELC 563 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E088 OF 2025
MN KULLOW, J
FEBRUARY 5, 2026**

BETWEEN

CLIF NYANDORO MAGARA APPLICANT

AND

EMBAKASI RANCHING COMPANY 1ST RESPONDENT

ERIC MUGWE NDUNGU 2ND RESPONDENT

LAND REGISTRAR NAIROBI 3RD RESPONDENT

RULING

1. This is a notice of motion application dated 24th November 2024 filed by the applicant seeking for stay of proceedings on the ruling delivered on 26th November 2024 in MCELRC NO E1604 OF 2020.

Prayers in the application dated 24th November 2024

1. That this Honourable Court be pleased to stay of Proceedings in Milimani Chief Magistrate MCELRC NO. E1604 of 2020 pending inter-parte hearing and determination of this Application.
2. That this Honourable Court be pleased to stay of Proceedings in Milimani Chief Magistrate MCELRC NO. E1604 of 2020 pending hearing and determination of the Appeal from the Ruling of Hon.Lady Njora, Senior Principal Magistrate delivered on the 31st day of July 2024.
3. That the Application be heard inter-partes on such date and time as this Honourable Court may direct.
4. That this Honourable Court be pleased to issue any other order and/or direction it deem fit to grant in the circumstances.
5. That there be no Orders as to costs.



2. The application was premised on grounds in the applicant's supporting affidavit sworn on 24th November 2024.
3. He deponed that the learned magistrate erred in law and fact in failing to allow the applicant amend and produce new evidence which would be crucial in the determination of the matter.
4. That the granting of stay orders will not prejudice the applicant in any way

Reply

5. The 2nd respondent file a replying affidavit in opposition dated 1st October 2025 where he deponed that the application was an abuse of the court process being that the applicant was forum shopping having filed a similar application in the lower court and that this application was meant to delay the hearing and conclusion of the matter.

Applicant's submissions

6. The applicant in support of its application, filed submissions dated 14th October 2025 where he indicated that he had filed an appeal in regards to the ruling delivered on 31/07/2024 by Hon Lucy Njora which appeal had high chance of success. That the failure to issue stay orders would be prejudicial to him since the lower court might enter judgement making the appeal nugatory. He relied on the case of Wilson Waweru Vs Robert Bor and Lucas Onyango (HC Civil appeal no E085 of 2024)

The respondents did not file any submissions

Analysis and determination

7. Having looked through the application, the corresponding rebuttals and the submissions, I find that the only issue for termination is;

Whether the application for stay in proceedings in MCELRC NO E1604 is warranted? When determining an Application seeking stay of proceedings, the Court is required to exercise its discretion after due consideration of the merits of the case and the likely effect that such an order may have on the need to ensure that the ends of justice are met. The exercise of the court's discretion must be grounded on judicious principles as the Hon. Justice Ringera held in the case of Global Tours & Travels Limited, Nairobi HC Winding Up Cause 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 so, 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.”



9. Further, in the case of *Kenya Wildlife Services v Jane Mutembi* (2019) eKLR, again, Hon. Justice F. Gikonyo held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings 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 proceedings is high and stringent

In the instant case, the applicant has indicated that should the lower court matter continue pending his appeal, Judgment might be entered and render the appeal nugatory. The appeal is seeking to set aside the ruling dated 31st July 2024 which ruling dismissed the application dated 16th October 2023. The application sought to amend the plaint to attach new evidence that apparently would aid the court in coming to a determination. The 2nd respondent indicated that the issue of amendment had already been addressed by the lower court and did not seek how the continuation of the lower court matter would be prejudicial to the applicant.

I agree with the reasoning of Justice Ringera in the above cited case *Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000* that 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. On the same vein, I also agree fully with the learned Judge that stay of proceedings impinges on the right of access to justice, right to be heard without delay and overall right to fair trial. Therefore, the test for stay of proceedings is high and stringent.”

10. Finally, by dint of the fact that in proceedings before the court, Section 1A of the [Civil Procedure Act](#) sets out the overriding objectives as follows;
1. The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 2. The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
 3. A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.
11. A perusal through impugned ruling at paragraph 2 of page 4 points out that the court indicated that it had not been given a reasonable explanation as why the valuation report was not included in the list of documents before the hearing hence could not allow the amendment.
12. I have perused the supporting affidavit to the application seeking leave to amend sworn on the 16th October 2023 and notably at paragraph 10 the applicant depones that the omission by his advocate not to attach the valuation report was unintentional. This is the only explanation given as to why the applicant did not file the valuation report and the basis for seeking leave to amend the pleadings.
13. I agree with the trial magistrate that there was no justifiable reason to warrant grant of leave to allow for the filing of the valuation report. In that regard I find no justifiable reasons to allow for application of stay of proceedings in the lower court as the applicant seeks to appeal.



14. For the reasons set out above, the Court makes the following Orders: -

- i. The application dated 24th November 2024 is therefore struck out with no order as to costs
It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 5TH DAY OF
FEBRUARY 2026.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Orengo for the Applicant

No appearance for the Respondents

Philomena W. Court Assistant

