



**Makori v Rubis Energy Kenya & 2 others (Environment and Land Case 3 of 2024) [2025] KEELC 5623 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5623 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE 3 OF 2024**

**MAO ODENY, J  
JULY 29, 2025**

**BETWEEN**

**JOHN NYANCHOKA MAKORI ..... PLAINTIFF**

**AND**

**RUBIS ENERGY KENYA ..... 1<sup>ST</sup> DEFENDANT**

**GEOFFREY KIHUNYU WANJURA ..... 2<sup>ND</sup> DEFENDANT**

**SIMON NDIRANGU MAINA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Applicants' Notice of Motion application dated 14<sup>th</sup> March, 2025 seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That pending the discharge of and further proceedings in respect of the complaint lodged to the National Environment and Management Authority by the Plaintiff herein, the compliance of any resultant Restoration Order(s) inclusive there be a stay of proceedings herein.
  - d. That the costs of this application be in the cause.
2. The application is supported by the annexed affidavit of Simon Ndirangu Maina sworn on 14<sup>th</sup> March, 2025, who deponed that the 2<sup>nd</sup> Defendant/Applicant is the registered proprietor of the parcel of land known as Mau Summit/Molo Block 1 (Mutirithia) 268 which borders the Plaintiff/Respondent's parcel of land known as Mau Summit/Molo Block 1/2652 (Mutirithia).
3. It was his averment that there was an unfortunate oil spillage that is the subject matter of this case that occurred on or about 29<sup>th</sup> May, 2024 and the 1<sup>st</sup> Defendant intervened to handle the emergency.



He further deponed that the National Environment and Management Authority is now seized of the matter and has assigned inspectors to consider the allegations with a view of submitting reports. The Applicant also stated that in order to exhaust the remedies available to the Plaintiff/Respondent, it is just and fair that there be an order of stay of proceedings in this matter.

4. John Nyanchoka Makori filed a Replying Affidavit sworn on 21<sup>st</sup> March, 2024, and urged the court to dismiss the application as the oil spillage was occasioned by the negligence of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants. He deponed that he never lodged a claim at the National Environment and Management Authority and it is not seized of this matter, further that it does not have powers to deal with environmental pollution complaints.

#### **2<sup>nd</sup> and 3<sup>rd</sup> Defendant/applicants' Submissions**

5. Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed submissions dated 11<sup>th</sup> June, 2025, and identified the issue for determination as: whether the application for stay of proceedings is justified and merited.
6. Counsel submitted that the suit touches on alleged environmental degradation, which squarely falls within the purview of the National Environment and Management Authority. Counsel relied on the cases of *Kenya Ports Authority v East African Power and Lighting Company Ltd & Others, Speaker of the National Assembly v Njenga Karume* [2008] 1KLR 425, *Republic v NEMA & 2 Others Ex parte Sound Equipment Ltd* [2011] eKLR. It was counsel's submission that the Plaintiff will suffer no prejudice if the application is allowed.

#### **Plaintiff /respondent's Submissions**

7. Counsel for the Plaintiff/Respondent filed submissions dated 16<sup>th</sup> June, 2025, and identified the issue for determination as, whether, the proceedings in this suit should be stayed. Counsel submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' application has not met the requisite threshold to warrant the grant of an order of stay of proceedings and relied on the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR.
8. It was counsel's submission that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants cannot place cogent evidence to show that the Plaintiff/Respondent indeed lodged a complaint with the National Environment Management Authority. Counsel relied on the case of *Renee Ng'endo Chege v Osidai Limited* [2024] eKLR and urged the court to dismiss the application with costs.

#### **Analysis And Determination**

9. The issue for determination is whether the proceedings in this suit should be stayed pending the discharge of the complaint lodged to the National Environment and Management Authority. It was the Plaintiff/Respondent's case that he never lodged a claim at the National Environment and Management Authority and it is not seized of this matter.
10. The Supreme Court in the case of *Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties)* [2023] KESC 113 (KLR) pronounced as follows:
  107. Flowing from the above findings and in that context, it is our view that, where the reliefs under the alternative mechanism are not adequate or effective, then there is nothing that precludes the adoption of a nuanced approach, as we have stated. What must matter at the end is that a path is chosen that safeguards a litigant's right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms can offer. This is because, to achieve a harmonious and effective legal framework, it is imperative to strike



a judicious balance between the emphasis on providing the initial opportunity for resolution to entities established by law and the assertion of a litigant's right to access the court. However, such convergence requires a case-by-case assessment by considering issues such as the nature of the dispute and the adequacy of the alternative dispute mechanism. See also our decision in *Bia Tosha Distributors Ltd v Kenya Breweries Ltd & 6 Others* (Pet No 15 of 2020) [2023] KESC 14(KLR) (Const. and JR) (17 February 2023) (Judgment).

108. It was therefore sufficient that the appellant alleged that a right in the Constitution had been infringed or threatened with violation, making it clear that in light of the provisions of the Constitution and the ELC Act, the issues raised were within the original jurisdiction of the ELC. That is also why section 3 of EMCA provides that, one of the general principles under the Act is the entitlement to a clean and healthy environment.....
11. Section 13 of the Jurisdiction of the Court the Environment and Land Court Act provides as follows:
- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  - (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes?
    - (a) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
    - (b) Relating to compulsory acquisition of land;
    - (c) Relating to land administration and management;
    - (d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
    - (e) Any other dispute relating to environment and land. [Rev 2012] No 19 of 2011 Environment and Land Court 9 [Issue 1]
  - (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution, 2010.
12. The plaintiff indicated to the court that, he had not filed any complaint to the National Environment Management Authority and therefore the orders he is seeking can be granted by this court.
13. Looking at the reliefs sought in the Plaint, it is clear that the Plaintiff seeks redress for violation of his right to a clean and healthy environment, an order for restoration and general damages for the damage caused to his property, together with costs.
14. As earlier cited, Section 13 (3) of the Environment and land Court Act states that nothing precludes this court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution, 2010.



15. On the issue of whether this court should grant stay of proceedings, in *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, states as follows:

“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.”

16. The Applicant has not met the threshold for the grant of orders of stay of proceedings. Consequently, the court finds that nothing precludes the Plaintiff/Respondent from asserting his rights in this court. This court finds that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Applicants’ Notice of Motion application dated 14<sup>th</sup> March, 2025 lacks merit and is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 29<sup>TH</sup> DAY OF JULY 2025.**

**M. A. ODENY**

**JUDGE**

