



**Muiga v Gitogo (Environment and Land Appeal E001 of 2026)
[2026] KEELC 1374 (KLR) (4 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1374 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL E001 OF 2026**

LN MBUGUA, J

MARCH 4, 2026

BETWEEN

PATRICIA NJERI MUIGA APPELLANT

AND

JOHN GITOGO RESPONDENT

RULING

1. Before me is the appellant's notice of application dated 12.1.2026 where the appellant is seeking orders that there be a stay of proceedings in Nyahururu CMC ELC 335 OF 2018, pending the hearing of the appeal. The grounds in support of the application are that the respondent filed the suit before the trial court claiming that the applicant who is the registered owner of parcel L.R.Marmanet /Melwa Block 1/2538 (Mohotetu) had encroached unto the respondent's parcel 2537.
2. During the pendency of the suit, the R.I.M for Melwa Block 1 was amended to resolve issues that affected the entire Melwa Block 1, and this led to changes of the boundaries that existed, and in particular, the relocation of the common boundary between L.R Marmanet/Melwa Block 1/2537 & 2538 (Mohotetu). The aforesaid change of common boundary relocated the appellant's permanent residential house and other structures, which prior to the amendment were on L.R Marmanet/Melwa Block 1/2538 (Muhotetu) to a portion of land on L.R Marmanet/Melwa Block 1/2537 (Muhotetu).
3. That the appellant had developed her parcel of land based on the official R.IM. before it was amended and as such her encroachment on the respondent's parcel of land after the R.I.M was amended was due to circumstances that were beyond her control. The aforesaid development prompted the appellant to file an application dated 17th September 2025 before the trial court, seeking leave to amend her defence and to include a counterclaim to swap the affected parcels. However, in a ruling delivered on 3rd December 2025, the court dismissed the application and fixed the matter for pre-trial on 15th January 2026.



4. The appellant aggrieved by the said ruling filed the current appeal. He avers that he will suffer substantial loss and damage if the current application is not granted, taking into account that the matter will proceed before the trial court which has a predetermined mind on the outcome of the suit as evident from its aforesaid ruling.
5. The application was served but no response was filed, thus the application is unopposed. Should the same be allowed in the circumstances? In principle, a court of law has a duty to look at what the application is all about and what it seeks, and it is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders; See SCOK decision in Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR.”
6. The issue for consideration before this court is whether the applicant has established sufficient cause to convince the court that it would be in the interest of justice to allow the application.
7. Black’s Law Dictionary, Ninth Edition, defines a proceeding as;

“(1) The regular and orderly progression of a law suit, including all acts and events between the time of commencement and the entry of judgment; (2) any procedural means of seeking redress from a tribunal or agency; (3) an act or step that is part of a larger action; (4) the business conducted by a Court or other official body”.
8. The general principles which guides the courts whenever they are invited to exercise the jurisdiction to stay proceedings are best summarized in Halsbury’s Law of England, 4th Edition, Vol 37 at pages 330 and 332 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 proceedings beyond all reasonable doubt ought not to be allowed to continue.”
9. This was affirmed by the Court in Ferdinard Ndung’u Waititu v Independent Electoral & Boundaries Commission (IEBC) & 8 others [2013] eKLR which persuasively stated thus;

“A stay of proceedings involves arresting or stopping proceedings. It is a tool used to suspend proceedings to await the action of one of the parties in regard to some step or some act (see Black’s Law Dictionary). This implies that the rationale for stay is the pendency of an act or step either required by the court or sought by a party. It may be grounded on a statutory provision or on the need of a party and based on a plea for the plenary exercise of the court’s discretion.”
10. In the case at hand, the applicant is challenging the ruling of the trial court delivered on 3.12.2025 through this appeal, and in the meantime, he desires that there be a stay of the proceedings before the trial court. A perusal of the aforementioned ruling indicates that the suit before the trial court was filed 8 or so years ago in 2018, and through his application dated 17.9.2025, the applicant wanted to put in a counterclaim, apparently to seek an order for swapping of the plots in question. The trial court had noted that the litigation in the matter had taken too long and that a similar application had been filed and abandoned. This court agrees with the findings of the trial court. It is a constitutional imperative that justice shall not be delayed; See Article 159 (2) (b).



11. A court has powers to allow necessary amendments to pleadings at any stage, but the granting or refusal of an application for such leave to amend is a matter within the discretion of the trial judge, See. Daniel Ngetich & Another v K-Rep Bank Limited [2013] Eklr and in the case at hand, I find that the trial court exercised its discretion judiciously in disallowing the proposed amendments, 8 years down the line from the time the suit was filed. The net effect is that the application dated 12.1.2026 is found to be unmerited, the same is hereby dismissed with no orders as to costs.
12. In light of the above holding, I find that the appeal would be an academic exercise, as such the appeal herein is summarily dismissed under Section 79B of the *Civil Procedure Act*.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 4TH DAY OF MARCH 2026 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Vanessa C/Assistant

Nderitu Komu for Appellant

