



**Bariwot & 4 others v Jelimo (Environment and Land Case
E031 of 2025) [2026] KEELC 1564 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E031 OF 2025**

CK NZILI, J

MARCH 18, 2026

BETWEEN

**RUTH CHERUTO BARIWOT 1ST PLAINTIFF
MARYJEBET BARIWOT 2ND PLAINTIFF
REBECCA CHEPNGETICH BARIWO 3RD PLAINTIFF
JOYCE CHEPCHIRCHIR TANGUT 4TH PLAINTIFF
ENOCK KIPKOECH KEMBOI 5TH PLAINTIFF**

AND

LILIAN JELIMO DEFENDANT

RULING

1. The applicant, by an application dated 3/12/2025, seeks a stay of proceedings in this matter in view of a pending appeal against a ruling of this court delivered on 5/11/2025, dismissing an application by the applicant dated 27/8/2025, that had sought the striking out of this suit on account of being res judicata.
2. The application is supported by an affidavit, undated, sworn by Lillian Jelimo. It is deposed that owing to the well-known backlog and delays in the Court of Appeal, there is a real likelihood that this suit will proceed to hearing and determination before the appeal is heard, thereby rendering it nugatory.
3. The applicant deposes that unless a stay of proceedings is granted, he will be:
 - (a) Exposed to re-litigating of issues conclusively determined in former suits.
 - (b) Vexed twice on the same cause of action.



- (c) Subjected to financial, emotional, and psychological suffering or hardship from prolonged and unnecessary litigation.
 - (d) Subjected to danger or contradictory decisions on matters already settled.
4. The applicant deposes that the balance of convenience tilts in favour of staying the proceedings by preserving the status quo and avoiding wastage of judicial time, whereas the refusal will subject her to hardship, without conferring a measurable benefit upon the respondent. The applicant deposes that no security is required as no decree exists against her.
 5. The application is opposed through a replying affidavit sworn by the respondents through Mary Jebet on 11/12/2025. It is deposed that the filing of a Notice of Appeal does not automatically guarantee the applicant a right to stay the proceedings, more so when the application does not satisfy the conditions of stay of proceedings or execution.
 6. The parameters to consider on an application for stay of proceedings were discussed in *Re Global Tours & Travels Nairobi HC Winding Cause No. 43 of 2000*, *Christopher Ndolo Mutuku & Another -vs- CFC Stanbic Bank Ltd [2015] eKLR* *David Morton Silverstein -vs- Atsango Chesoni [2002] KECA 287 (KLR)*, and *Kenya Wildlife Service -vs- James Mutembei [2019] eKLR*.
 7. From the cited caselaw, the distilled principles or considerations are :
 1. Whether the application has a prima facie arguable appeal or case.
 2. Whether the application was filed timeously.
 - (3) Whether there is sufficient cause to satisfy the court that it is in the interest of justice to grant the orders sought.
 8. In *Halsbury's Law of England 4th Edition, Vol. 37, pages 330 and 332*, a stay of proceedings is termed as a serious, grave, and fundamental interruption of the right that a party has to conduct his litigation towards trial, based on substantive merits of his case, and hence the discretion to stay proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue; and therefore should only be sparingly allowed and only where there is evidence that the proceedings are frivolous, vexatious or harassing or are manifestly groundless or disclose no known cause of action.
 9. In *David Morton Silverstein -vs- Atsango Chesoni (supra)*, court held that if there is a pending appeal, an applicant should explain why stay has not been sought in a higher court, since the policy is to go to that court is better placed to calibrate its orders, there must be demonstration that the appeal raises substantial question to be determined or is otherwise arguable, that there must be demonstration that the appeal will be rendered nugatory and that there are exceptional circumstances why stay is warranted as opposed to hearing the case conducted safely and all arising grievances taken up on a single appeal. See *Kenya Railways Corporation -vs- Bilal & 14 others (Petition (Application) E023 of 2025) [2026] KESC 14 (KLR) (30 January 2026) (Judgment)*.
 10. The applicant says that given the backlog at the Court of Appeal, his intended appeal is likely to be rendered nugatory in the absence of a stay and that if the court proceeds to hear and determine the suit before her appeal is heard and determined, she will be exposed to both unnecessary financial, economic, and psychological hardship, waste of judicial time and prolonged re-litigation on already determined issues.



11. Further, the applicant states that her appeal shall be rendered nugatory. Nugatory means worthless, futile, or invalid. It also means trifling. In Stanley Kangethe Kinyanjui -vs- Tony Keter & Others [2013] eKLR, the court held that whether or not an appeal will be rendered nugatory must be supported by evidence. The court further held that in considering the nugatory aspect, the court is only concerned with the question of whether, what is sought to be stayed, if allowed to happen, is reversible, or if it is not reversible, damages can reasonably compensate the party aggrieved.
12. In Reliance Bank Ltd -vs- Norlake Investments Ltd [2002] I EA 227, the court observed that whether or not an appeal will be rendered nugatory has to be considered within the circumstances of each case, by considering also the conflicting circumstances of both sides.
13. In African Safari Club Limited -vs- Safe Rentals Limited [2010] eKLR, the court said that when there is a scenario of almost equal hardship, by the parties, the court must pursue the overriding objective to act fairly and justly, by pulling the hardship of the two sides on scale by treating them with equality or placing them on equal footing in so far as it is practically possible.
14. Applying the foregoing caselaw to the instant application, the court, in its ruling now appealed against, held that res judicata in the circumstances could not be determined as a preliminary issue without demonstration, through evidence, at the main hearing. The intended grounds of appeal have not been indicated. A memorandum of appeal is yet to be filed. There is no evidence that there are exceptional circumstances to warrant a stay of proceedings.
15. As much as the applicant has a right of appeal, that has to be balanced against the rights of the respondent to expedited disposal of the suit, fair hearing, and access to justice. The applicant can still be compensated by way of costs if she were to be successful in the intended appeal.
16. The court finds no basis to stay the proceedings. The application is dismissed with costs.
17. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF MARCH 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Ndarwa for Muniolo for the plaintiff present

Kamau Lagat for the defendant

