



Saruni & 10 others (Suing on their own behalf and on behalf of 439 other people being other residents of Kasaani, Majengo Mpya and Salaita Villages) v Jipe Multi Purpose Co-operative Society Limited & 5 others (Land Case E014 of 2025) [2026] KEELC 1832 (KLR) (Environment and Land) (25 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1832 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
LAND CASE E014 OF 2025
EK WABWOTO, J
MARCH 25, 2026**

BETWEEN

**JOSHUA TIPTIP SARUNI 1ST PLAINTIFF
JOSHUA MUTWOTA 2ND PLAINTIFF
EZEKIEL MUTERO LEMUJINI 3RD PLAINTIFF
CHRISTOPHER KANYINGI 4TH PLAINTIFF
NGANANA KISHAPUA 5TH PLAINTIFF
ROBERT MUTUKU KYENDO 6TH PLAINTIFF
HARRISON NYAMAI 7TH PLAINTIFF
PETER KIMEU 8TH PLAINTIFF
JOSEPH KAIYAN 9TH PLAINTIFF
JOSHUA MUEMA SITA 10TH PLAINTIFF
LUKA MULYANGUKU 11TH PLAINTIFF
SUING ON THEIR OWN BEHALF AND ON BEHALF OF 439 OTHER PEOPLE
BEING OTHER RESIDENTS OF KASAANI, MAJENGO MPYA AND SALAITA
VILLAGES**

AND

**JIPE MULTI PURPOSE CO-OPERATIVE SOCIETY LIMITED . 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT**



THE NATIONAL LAND COMMISSION 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

AND

COUNTY COMMISSIONER TAITA TAVETA COUNTY 1ST INTERESTED PARTY

OFFICER COMMANDING POLICE DIVISION TAVETA 2ND INTERESTED PARTY

RULING

1. By a Notice of Motion dated 5th February 2026, brought under Section 1A, 1B & 3A of the Civil Procedure Rules, 2010, the 1st Defendant/Applicant seeks for stay of the proceedings herein pending the hearing and determination of the appeal from the ruling and orders of this Court issued on 17th December, 2025 which dismissed the Applicant's application seeking to strike out the suit on grounds of being res judicata.
2. The application is supported by the affidavit sworn by Kipsha Lawrent Mlonwa on 5th February 2026. It is contended that the Applicant is aggrieved with the said ruling and has already preferred an appeal by filing a Notice of Appeal on time. The Appeal will be rendered nugatory if the proceedings are not stayed. No prejudice will be caused to the Respondent if the orders sought are not granted and it will be purely on the interest of justice to allow the application.
3. The application was opposed by the Plaintiffs/Respondents vide a Replying Affidavit sworn by Joshua Muema Sita. It was averred that the hearing and determination of this suit is a matter of grave importance to the Plaintiffs and the community at large given the uncertainty as to their title and the ownership therein which is a matter to be determined by this court and as such the continuation of the suit shall in no way render the appeal nugatory.
4. It was further averred that the Applicant has not demonstrated any substantive merits to the appeal, it has not been demonstrated how the same will be rendered nugatory and further how the continuation of the proceedings will be unjust vis a vis the right to appeal which has already been exercised.
5. It was deposed that an order staying proceedings is a serious, grave and fundamental interruption of the right of a party to conduct his litigation towards the trial and as such should not be allowed if it does not pass the high and strongest test.
6. During the plenary hearing of the application Learned Counsel Mr. Kiarie made oral submissions on behalf of the Applicant while Learned Counsel Ms. Wambura submitted on behalf of the Plaintiffs/Respondents. The Applicant's Counsel referred to several authorities including the case of IMCO Holding Limited =Versus= Malachi N. Nyangau (2022) KEELR C479 (KLR), in Ndabi Kimotho & Anita (2023) KEHC 17717 (KLR) (19 May 2023), Stanley Kangethe Kinyanjui =Versus= Tony Ketter & 5 Others (2013) KECA 378 (KLR) among others.
7. Having carefully considered the application, affidavits filed and the cited authorities together with the oral submissions for both Counsel and the applicable law, the main issue for determination is whether this Court should proceed to stay these proceedings pending the hearing and determination of the preferred appeal against its ruling delivered on 17th December 2025.



8. Stay of proceedings is governed by Order 42 Rule 6(1) and (b) of the Civil Procedure Rules. Under Halsbury's Laws of England 4th Edition, Vol. 37, page 330, it is described as a serious, grave, and fundamental interruption in the right to expeditious disposal of matters, which can only be granted sparingly and on exceptional circumstances. In *William Odhiambo Ramogi & Others -vs- Attorney General & Others (MUHURI)*, IP [2020] eKLR, the cited *Global Tours & Travels Ltd (supra)*, and *David Morton Silverstein -vs- Atsango Chesoni [2002] eKLR*, that:
- (a) There must be a pending appeal.
 - (b) The appeal must raise a substantial question.
 - (c) It would be rendered nugatory in the absence of a stay.
 - (d) Exceptional circumstances must be shown.
 - (e) It must be shown that the application was filed expeditiously and without delay.
9. In *Kenya Wildlife Service -vs- James Mutembei [2019] eKLR*, the court said that since a stay of proceedings impinges on the right to access justice, the right to be heard without delay, and the right to a fair trial, the test must be higher and stringent.
10. Over and above the statutory conditions, the Court must be satisfied that the intended appeal is arguable and that unless stay of proceedings is granted the appeal will be rendered nugatory. The twin test was authoritatively laid down in the Court of Appeal Case of *Stanley Kang'ethe* case (*Supra*).
11. Borrowing from the above, the Court of Appeal has recently applied these principles in a directly analogous case involving the stay of the Environmental and Land Court proceeding in the case of *Nairobi County Government =Versus= Nuclear Investment Limited (Civil Application) E874 of 2023 (2024) KECA 1596 (KLR)* wherein the Court of Appeal dismissed an application for stay of ongoing ELC proceedings pending appeal. The Court confirmed that the appeal raised arguable points but held that the Applicant had failed to demonstrate that the appeal would be rendered nugatory if stay is not granted. The Court stated:
- “We are not satisfied that the appeal will be rendered nugatory if we do not grant stay.....The Applicant having failed to satisfy the second limb on which an application of this nature applies, the motion failed and was dismissed”
- The Court further emphasized that the continuation of the ELC suit does not automatically render the appeal academic, the final appellate judgment would still determine the parties rights and prejudice is curable. This decision underscores that vague and general assertions of nugatory effect are insufficient since the Applicant must show specific, irreversible harm to the substratum of the appeal. The same position was reiterated in subsequent decisions including the case of *Ngetich =Versus= Goren & Another (Civil Application E021 of 2024 (2025) KECA 565 (KLR) (28 March 2025)* and *Nthiga =Versus= Stower (2025) KEELC 8094 (KLR) 920 November 2025*.
12. Most recently in the case of *Moi Teaching and Referral Hospital & Another =Versus= Gikenyi B. (2025) KESC 75 (KLR) (11 December 2025)* the Supreme Court has further reaffirmed this strict application of these principles to prevent abuse and ensure expeditious justice
13. In applying the above principles and the cited cases to the instant case, the Court accepts that the preferred appeal raises an arguable point concerning the doctrine of *res judicata* and thus satisfying the limb. However, the Applicant has not demonstrated that the appeal will be rendered nugatory. The Applicant has merely repeated the general assertion that the appeal will be rendered nugatory



if proceedings are not stayed. No specific evidence of irreversible harm has been placed before this court. This is precisely the situation the Court of Appeal addressed and rejected in the Nairobi County Government =Versus= Nuclear Investment Limited (Supra) case.

14. This Court takes the position that granting of stay would indeed cause real prejudice to the Plaintiffs/ Respondents who are entitled to have the suit heard and determined without further delay. The overriding objective under Section 1A and 1B of the *Civil Procedure Act*, Article 159(2)(6) of *the Constitution* and Section 3 of the *Environment and Land Court Act* No. 19 of 2011 demands that litigation be conducted justly, expeditiously and proportionately. The balance of convenience clearly titles in favour of the Plaintiffs/Respondents.
15. Looking at the material placed before this court, the prejudice to be suffered if the suit proceeds and is determined to its logical conclusion has not been indicated. All in all there are no exceptional circumstances to stay the proceedings.
16. In conclusion, the Notice of Motion dated 5th February 2026 is hereby dismissed. Each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 25TH DAY OF MARCH 2026.

E. K. WABWOTO

JUDGE

In the presence of:-

Ms. Wambura for the Plaintiffs/Respondents.

N/A for the other parties.

Court Assistants: Mary Ngoira and David Ngoosa.

