



Kisoso v Kimamet and Totona (Suing as the Legal Representatives of Kiporot Ole Totona alias Singo Arap Totona - Deceased) & 3 others (Environment and Land Case 267 of 2017) [2025] KEELC 5547 (KLR) (25 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5547 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 267 OF 2017**

**MAO ODENY, J
JULY 25, 2025**

BETWEEN

PRISCILLA JERUTO KISOSO PLAINTIFF

AND

LETEMA TOTONA KIMAMET & FREDRICK TOYONGO TOTONA (SUING AS THE LEGAL REPRESENTATIVES OF KIPOROT OLE TOTONA ALIAS SINGO ARAP TOTONA - DECEASED) 1ST DEFENDANT

TUNGO TOTONA 2ND DEFENDANT

LEDEMA TOTONA 3RD DEFENDANT

RONALD TOTONA 4TH DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff/Applicant’s Notice of Motion application dated 29th October, 2024 which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the intended Appeal against the Defendant/ Respondents herein this Honourable Court be pleased to stay the proceedings and/or further proceedings and/or hearing and/or any action in this suit.
2. The application is supported by the annexed affidavit of Priscila Jeruto Kisoso, the Plaintiff/Applicant, who deponed that on 27th September, 2024, Hon Justice M. Warsame J. A granted her leave to file



an appeal out of time. It was her evidence that if this case proceeds and her appeal succeeds, there is a likelihood that there will be two judgments in the same case, which will be embarrassing.

3. Letema Totona Kimamet filed a Replying Affidavit sworn on 25th November, 2024 and deponed that the Plaintiff/Applicant seeks to curtail the Defendant/Respondents' right to be heard. He also stated that the applicant has not adduced any cogent reason that the denovo case ought not to be allowed to continue and urged the court to dismiss the application with costs.

Plaintiff/applicant's Submissions

4. Counsel for the Plaintiff filed submissions and identified the issue for determination as whether the Plaintiff/Applicant is entitled to the orders sought. Counsel submitted that they have satisfied the principles set by courts in respect of stay of proceedings.
5. It was counsel's submission that the Applicant has established a prima facie case, as the ruling of the Court of Appeal dated 27th September, 2024 stated that the appeal is arguable and that they brought the application expeditiously. Counsel further submitted that granting the orders sought will restore decorum and it is in the interest of justice to all parties.
6. Mr. Kibet relied on Order 42 (6) of the Civil Procedure Rules and the cases of Kenya Power & Lighting Co Ltd vs Esther Wanjiru Wokebii Civil Appeal No 326 of 2013 (2014) eKLR, Port Florence Community Health Care vs Crown Health Care Limited [2022] eKLR, Timothy Kisina Kithokoi vs Elijah Kitele & Another [2022] eKLR, Macharia vs Macharia & Another (Civil Appeal E021 of 2023) [2023] KEHC 27492 (KLR), Benson Khwatenge Wafula vs Director of Public Prosecutions; Ethics and Anti-Corruption & 2 others (Interested Parties) [2020] eKLR, Millicent Wamaitha Njogu vs Pauline Nyambura Waweru [2022] eKLR and Port Florence Community Health Care vs Crown Health Care Limited [2022] eKLR.

Defendant/respondents' Submissions

7. Counsel for the Defendants filed submissions dated 28th November, 2024 and submitted that the Applicant should have moved the Court of Appeal for the orders sought and further that the application has not met the threshold for the grant of stay of proceedings.
8. Mr. Arusei relied on the cases of: *Kuko & Another vs Ali & Another; Robinson (Interested Party) (Civil Application E023 of 2023)* [2024] KECA 305 (KLR), Mafoys United Africa Co Ltd (1961) 3 All ER 1169, Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd [1969] EA 696, Owners of the Motor Vessel "Lilian S" vs Caltex Oil (Kenya) Limited [1989] KLR 1, Samuel Kamau Macharia vs KCB & 2 Others, Civil Application No 2 of 2011, Chalisha FCS Ltd vs Odhiambo & 9 Others (1987) KLR, Peter Njuguna Gitau vs Daniel Kiprono Kiptum & 3 Others [2022] eKLR, Republic vs Paul Kihara Kariuki, Attorney General & 2 others Ex Parte Law Society of Kenya [2020] eKLR, Peter Njuguna Gitau vs Daniel Kiprono Kiptum & 3 others [2022] eKLR, Board of Governors Moi High School Kabarak vs Malcom Bell & Another (2013) KLR-SCK and Mwai Kibaki vs Daniel Toroitich Arap Moi (1999) eKLR. Counsel urged the court to dismiss the application with costs.

Analysis And Determination

9. The issue for determination is whether the Applicant has met the threshold for the grant of stay of proceedings pending the hearing and determination of the Appeal. This case has a long history, as it was filed in 2006. It was heard and determined vide a judgment dated 19th January 2023.



10. On 21st February 2023, Justice Mwangi Njoroge delivered a ruling where the court ordered that this matter be heard de novo with all the parties in the counterclaim on board.
11. The Applicant filed an application for stay of proceedings but, the Defendant filed a preliminary objection to the jurisdiction of this court on the ground that it is functus officio. The court heard the preliminary objection and dismissed the same vide a ruling dated 22nd May 2025 and directed that this application be fixed for hearing within 30 days from the date of the ruling.
12. In the case of William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others [2019] eKLR, a 5-judge Bench of the High Court, laid out the principles for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court and cited with approval the cases of Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR; Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000); David Morton Silverstein v Atsango Chesoni [2002] eKLR as follows:
 - a. First, there must be an appeal pending before the higher Court
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
13. In the case of Turbo Highway Eldoret Ltd v Muniu (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling) the court stated as follows:

“I am not persuaded, however, that the appeal will be rendered nugatory by the mere fact that the trial may proceed and a judgment on merits given. A judgment given is capable of being stayed. Whether the fact that a party had preferred an interlocutory appeal is entitled to a stay of proceedings cannot, therefore, merely be based on the fact that the Trial Court might consider what the appellant considers to be erroneous conclusions in its judgment. If the rule were otherwise, it would seriously impede proceedings in the trial Courts. This is because a party who is keen on obstructing a case from proceeding would simply prefer multiple appeals against interlocutory rulings by the Trial Court and then seek stay of proceedings in the Trial Court.”



14. The Applicant informed the court that she has been granted leave to file an appeal but has not indicated whether such appeal has been filed and the progress thereof. If such an appeal had been filed, then it would have been prudent to file an application for stay of proceedings in the Court of Appeal, which would be able to give timelines on the hearing and determination of the Appeal.
15. This court in its ruling on the preliminary objection by the Defendant respondent that this court is functus officio of which the court held that this matter is still pending for hearing hence it has the requisite jurisdiction to hear and determine the application.
16. The court further held that if the Applicant had chosen to file an application for stay of proceedings in the Court of Appeal, it would still have considered the same as it has the jurisdiction to grant such orders. I suspect that the Applicant did not file the same in the Court of Appeal due to the fact that it had sought for leave to file an Appeal out of time and at that time the appeal had not been filed.
17. The Applicant has also indicated to the court whether such an Appeal has subsequently been filed to establish its arguability. The filing of a Notice of Appeal in itself does not grant an Applicant an automatic stay of execution or proceedings.
18. 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.”

19. The court is cognizant of the fact that the power to grant an order of stay of proceedings should be exercised sparingly and only in exceptional circumstances as such an order may infringe on a litigant's right to conclude a trial on merit without undue delay by interlocutory applications for stay of proceedings in a higher court.
20. Frivolous and vexatious litigants have used this as a delaying tactic to stop the hearing and determination of cases. If left unchecked, then any interlocutory ruling can be appealed against to buy time or stall the hearing of a case. This is not to say that there are exceptional circumstances where an order of stay of proceedings can be granted to preserve the substratum of the case.
21. In the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 the court held that:

“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, 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” (emphasis added)

22. There is a need for expeditious disposal of cases and as noted earlier that this case was filed in 2006 and has been handled by Justice D K Musiga (Now J A), Justice Anyara Emukule (Rtd), Justice Ouko (now SCJ), Justice Waithaka, Justice Munyao, Justice Ohungo, Justice Mwangi Njoroge and myself.
23. This shows how long this matter has been in the court corridors. This fits the saying that “Justice delayed is justice denied.” Causes of delay in hearing and determination of cases are threefold: one, by the parties themselves who file cases and think that the court is a parking lot and a place for squaring personal vendettas or where flexing their muscle power, two, by counsel who never want to proceed to continue charging fees, and the court due to pressure of work and other unforeseen circumstances.
24. Taking into account that there is no evidence that an Appeal has been filed, I am not persuaded to exercise my discretion to grant a stay of proceedings. If the Appeal is finally filed, heard and determined, whatever the outcome, which may, either allow the case to be heard de novo as the court had ordered or that the Judgment of the court delivered on 19th January 2023 be upheld. There will be no prejudice occasioned to either party whether the Appeal is allowed or not. The application is therefore dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF JULY 2025.

M. A. ODENY

JUDGE

