



**Ponda (Suing in his own Capacity and in his Capacity as the Administrator of the Estate of Molino Giuseppina (Deceased)) v Kivulini Village Beach Hotel Limited & 15 others (Environment and Land Case 18 of 2024) [2026] KEELC 2485 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2485 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE 18 OF 2024**

**EK MAKORI, J  
APRIL 23, 2026**

**BETWEEN**

**VALENTINE HINZANO PONDA (SUING IN HIS OWN CAPACITY AND IN HIS CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF MOLINO GIUSEPPINA (DECEASED)) ..... PLAINTIFF**

**AND**

**KIVULINI VILLAGE BEACH HOTEL LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**LUCY MWELU MULI ..... 2<sup>ND</sup> DEFENDANT**  
**MULI AND OLE KINA ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**  
**MARIO MOCCAGATA. .... 4<sup>TH</sup> DEFENDANT**  
**GIOVANI BONATO ..... 5<sup>TH</sup> DEFENDANT**  
**STELLA MONTI ..... 6<sup>TH</sup> DEFENDANT**  
**MARIO CIBRARIO ROMANIN ..... 7<sup>TH</sup> DEFENDANT**  
**BLACK AND WHITE RESORT LIMITED ..... 8<sup>TH</sup> DEFENDANT**  
**ZAWADI RESIDENCE LIMITED ..... 9<sup>TH</sup> DEFENDANT**  
**MALINDI FLAMINGO LIMITED ..... 10<sup>TH</sup> DEFENDANT**  
**ANFUSO FABIO ..... 11<sup>TH</sup> DEFENDANT**  
**LUCY WANJIKU GITHINJI ..... 12<sup>TH</sup> DEFENDANT**  
**RUTH GATHIGA KAMUNYA ..... 13<sup>TH</sup> DEFENDANT**  
**MARIAM BALUNGI SENSALIRE ..... 14<sup>TH</sup> DEFENDANT**  
**SARAH BIRUNGI SENSALIRE ..... 15<sup>TH</sup> DEFENDANT**



**RULING**

1. The application dated May 20, 2005, seeks:
  - a. Spent.
  - b. The Court be pleased to stay all further proceedings in this suit pending the hearing and determination of this application.
  - c. The Court be pleased to order a stay of proceedings in this suit until the 1st plaintiff pays the 8th defendant the sum of KShs. 160,160.00 being the costs ordered to be paid to the 8th defendant under the Certificate of Costs given by the Court on 23rd September 2024 in Malindi ELC No. E011 of 2023 (Valentine Hinzano Ponda v Zawadi Residence Limited and Chief Land Registration Officer, Kilifi).
  - d. The Court be pleased to stay further proceedings in this suit until the hearing and determination of the Notice of Motion application by the 1st to 10th defendants, dated 20th May 2025, in Malindi ELC No. E023 of 2023 (Valentine Hinzano Ponda v Anfuso Fabio, the 10th defendant herein).
  - e. This Court be pleased to stay further proceedings in this suit pending delivery of the judgment in the 10th defendant Counterclaim in Malindi ELC No. E023 of 2023 (Valentine Hinzano Ponda v Anfuso Fabio).
  - f. The costs of this application be provided for.
2. The application is supported by the affidavit of counsel for the applicant, Mr. Kinyua Kamundi, who deposed on May 20, 2025.
3. In response to this application, the plaintiffs have filed a replying Affidavit, sworn by Valentine Hinzano Ponda on the 23rd May 2025 and filed on the 26th May 2025.
4. After considering the materials and submissions by the parties, the issues I frame for the determination of this Court are whether to stay proceedings pending the payment of taxed costs and the delivery of judgment in ELC No. 23 of 2023, and who should bear costs.
5. The Court directed the parties to file written submissions. I acknowledge receipt of submissions from counsel for the respondents. I did not see submissions from counsel for the applicants.
6. This file was directed to be heard simultaneously with ELC No. 23 of 2023, whose motions were interwoven with the current motion. In its final findings, the Court ruled as follows:

“After considering the materials before me, the judgment in this matter will address the very issues raised in ELC No. E018 of 2024, and the parties here, particularly the affected parties, are enumerated as defendants in the aforesaid suit.

To avoid convoluted, it will be prudent that the pending judgment be stayed, that the applicant be allowed to defend, and that the proceedings so far taken be heard de novo.



On the issue of consolidation, to my mind, it will be premature. Counsel for the parties should first check with their clients on how to proceed in an orderly manner in this matter and in ELC No. E018 OF 2024

Consequently, the application dated 20th May 2025 was dismissed. The application dated 2nd April 2025 was partially allowed, with the delivery of judgment stayed, the ex parte proceedings so far taken set aside, to allow the parties to choose which path to take regarding the two matters, whether to fold one or consolidate in the future, depending on any necessary applications that may be desirable.

The parties will bear their own costs concerning the motions.”

7. Having partially addressed the issue of the pending judgment, what remains here is whether to stay proceedings pending the payment of taxed costs.
9. I will agree with counsel for the respondents, citing the decision in *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR), that:

“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.”

10. Regarding a stay of proceedings pending payment of costs reckoned in another matter, I do not consider it a proper ground for a stay. A stay cannot be granted pending payment of costs. Those costs may be incurred through execution as provided by law. Moreover, ELC No. E023 of 2023 is a separate suit, with different parties and proceedings here cannot be stayed pending judgment in that matter – for which I have already provided directions.
11. Consequently, the application dated 20th May, 2025, is hereby dismissed with costs.

**RULING DATED, SIGNED, AND DELIVERED VIRTUALLY IN NYERI ON THIS 23RD DAY OF APRIL, 2026.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Ms. Muyaa for the Applicant

Ms. Akwani for the Respondents

Court Assistant - Ngatia

