



**Nickson v Makhanu & 3 others (Environment and Land Case E001 of 2024) [2025] KEELC 5504 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5504 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E001 OF 2024**

**CK NZILI, J  
JULY 23, 2025**

**BETWEEN**

**AMUHAYA SAGINI NICKSON ..... PLAINTIFF**

**AND**

**SAMMY COLLINS MULONGA MAKHANU ..... 1<sup>ST</sup> DEFENDANT**

**TITUS BARAZA MAKHANU ..... 2<sup>ND</sup> DEFENDANT**

**EDWIN MULONGO MAKHANU ..... 3<sup>RD</sup> DEFENDANT**

**CALEB SIMIYU MAKHANU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before the court is an application for a stay of proceedings dated 12/3/2025. The grounds are contained on the face of the application and in a supporting affidavit of Titus Barasa Makhanu of a similar date. It is stated that there is a pending summons for revocation of the grant dated 7/5/2024 in Kitale CM Succession Cause No. E204 of 2023, in the estate of Hellen Inzayi Mulongo (deceased), and if the letter of grant is revoked, all the documents filed herein, on behalf of the estate of the deceased, could be expunged from the court record for want of competence.
2. The applicant, who is the 2<sup>nd</sup> defendant, deposes that on 29/12/2023, he petitioned for letters of grant together with the 4<sup>th</sup> defendant, which were issued on 17/3/2024, but before confirmation, they have been challenged by their father. He attached the same as TBM-2 and 3. The applicant deposes that if the letters of grant are revoked, he will have no locus standi to the counterclaim of his late mother.
3. The application is opposed by the replying affidavit sworn by Amuhaya Sagiri Nickson on 18/3/2025, since similar issues were heard and determined in a ruling delivered on 10/12/2024, attached as annexure ASN-1. It is deposed that matters raised in the application are succession matters which this



- court has no jurisdiction over, other than the subject issue of the suit based on trespass to Trans Nzoia/Botwo/521.
4. The 1<sup>st</sup> respondent deposed that he is not a party to the succession case; hence has no relationship with the instant suit, as the suit land is not among the property under the succession cause. It is deposed that the applicant is hiding under the succession cause as a delaying tactic in all attempts to fish for favourable evidence. The 1<sup>st</sup> respondent deposes that the applicant and his brothers are in the business of alternating applications to frustrate him and the suit from proceeding to full hearing.
  5. The applicant relies on a written submissions dated 4/4/2025. Reliance is placed on Section 3A of the Civil Procedure Act, Section 13(7) of the Environment and Land Court Act, Harnam Singh & Others v Mistri [1971] EA 125, Jadva Karsan v Harnam Singh [1953] 20 EACA 74 and Symon Nyamu Muthigani v Charity Wangui Munene [2015] eKLR.
  6. The 1<sup>st</sup> respondent relies on written submission dated 5/4/2025. Reliance Bazo v Ali (ELC Appeal No. E003 of 2023) [2024] KEELC 6115 [KLR], Omar T/A Sabrin Shop v Highrise Commodities Ltd, Civil Appeal No. E291 of 2023) [2024] KEHA 6177 [KLR] (27<sup>th</sup> May 2024) and I Independent Electoral & Boundaries Commission v Maina Kiai & Others [2017] eKLR.
  7. A party seeking a stay of proceedings must meet the criteria set in Kenya Wildlife Service v James Mutembei [2019] eKLR, Re Global Tours & Travel Ltd Nairobi Winding Up Cause No. 43 of 2000, Odhiambo Ramogi & Others v Hon. Attorney General & Others [2019] eKLR and David Morton Silvertein v Atsango Chesoni [2002] eKLR. There must be exceptional circumstances that warrant the stay of proceedings as opposed to having the case concluded.
  8. The applicant must show that he applied expeditiously and without delay. In Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 37 page 330, the treatise observes that a stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct their litigation towards the trial, based on substantive merits of his case and that, as a general rule, stay of proceedings should not be imposed unless there are exceptional circumstances or where the suit is frivolous, vexatious or harassing or is manifestly groundless or discloses no cause of action.
  9. The reasons advanced for staying the suit are that the capacity under which the 2<sup>nd</sup> and 4<sup>th</sup> defendants have come to court is under challenge by their father at the lower court and who is a party herein and if it is revoked, the case before the court against them and the counterclaim could fall. The 1<sup>st</sup> respondent, on the other hand, reads mischief for a similar application by the brother of the applicant was determined on 4/12/2024 and that the succession cause has nothing to do with the claim based on trespass to Trans Nzoia/Botwo/521.
  10. The primary pleadings in this suit by the plaintiff is the amended complaint dated 21/1/2025. He seeks damages and a permanent injunction due to trespass to LR no Trans Nzoia/Botwo/521 on 25/1/2023, by the defendants as the sons of Henry Mulongo Makhana, who had sold him the land. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants filed an amended statement of defence dated 12/3/2025. They deny that the plaintiff is the registered owner of LR no Trans Nzoia/Botwo/521. The capacity in which the defendants allegedly acted in the alleged trespass is neither pleaded by the plaintiff nor the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants.
  11. The applicant herein avers that if the grant issued to him together with the 4<sup>th</sup> respondent is revoked, the defence and counterclaim on behalf of the estate of his late mother, that LR no Trans Nzoia/Botwo/521, which was illegally generated from Trans Nzoia/Botwo/53, out of her spousal contribution, will effectively be challenged by the 1<sup>st</sup> respondent, on account of the validity of all the documents that he has filed in this suit for lack of locus standi.



12. The starting point is whether there are exceptional circumstances to warrant a stay of proceedings. He who avers must prove. A cause of action is defined as conduct on the part of the defendant that gives rise to a cause of complaint by the plaintiff. The cause of action herein relates to trespass by the defendants in their capacities as children of the seller to the land on 10/12/2023. There is no evidence that the defendants were holders of letters of administration at the time and were acting on the strength of the estate of the late Hellen Inzayi; took the law into their own hands, or that they were title holders of the suit land.
13. The defendants have not been described in the amended plaint as legal owners of or legal representatives or beneficiaries of LR no Trans Nzoia/Botwo/521. Equally, the defendants have not described themselves as such in their pleadings. Therefore, whether or not the defendants were to acquire or did acquire that capacity after the date pleaded, for the cause of action would not amount to a justification on a cause of action based on trespass to private land as per Section 3(3) of the Trespass Act.
14. The jurisdiction of this court and that of the Family Division of the High Court are distinct and separate. The framers of the Constitution, who are the Kenyans, set that clear distinction. The court finds that the issue of stay of proceedings is not res judicata. The ruling dated 10/12/2024 was not on a stay of proceedings. Similarly, and more importantly, the parties herein have engaged in endless interim applications and counter applications, which are not in the best interest of justice. A lot of judicial time has been spent so far on interlocutory applications.
15. To seek for stay of proceedings based on a non-pleaded capacity is yet another attempt to derail, delay and abuse the court process. The applicant is acting in person but is also on record for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants. For him, therefore, to act in person and also on behalf of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants, requires that he adheres to the rule of assisting the court to achieve its overall objective under Sections 1A, 1B, 3A and 3B of the Civil Procedure Act and Article 159 of the Constitution.
16. The upshot is that I decline to stay the proceedings herein. Parties to list the suit for hearing on a priority basis.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 23<sup>RD</sup> DAY OF JULY 2025.**

In the presence of:

Court Assistant – Dennis

Leyaiya for 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants present

No appearance for plaintiff

2<sup>nd</sup> applicant present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

