



**Abdi v Pamoja Construction Limited & 2 others; Kenya United Sports Ltd (Third party)
(Environment & Land Case E082 of 2023) [2025] KEELC 394 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 394 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E082 OF 2023**

**AA OMOLLO, J
JANUARY 30, 2025**

BETWEEN

BATULA HASSAN ABDI PLAINTIFF

AND

PAMOJA CONSTRUCTION LIMITED 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT

AND

KENYA UNITED SPORTS LTD THIRD PARTY

RULING

1. For determination is the notice of motion application dated 6th November, 2024 brought by Kenya United Sports Ltd. the third party hereafter referred to as the Applicant. It seeks orders;
 - i. Spent
 - ii. That this Honourable Court be pleased to grant an order of stay of the proceeding in this suit pending hearing and determination of the appeal at Nairobi Court of Appeal being Nairobi Coaca No. E301 of 2023 (Kenya United Sports Limited Vs Aurie Marie Joy Kimemiah & Others).
 - iii. That costs of this application in the cause.
2. It is supported by the grounds listed on its face and the affidavit of Westone Kipsosgei Langat. The grounds are as follows;



- a. That this Honourable Court delivered a judgment on 4th August, 2022 where it declared that parcel of land known as LR No. 13873 situated at Karen plans in Nairobi is wholly owned by the plaintiff and that the plaintiff holds the genuine title deed.
 - b. That the Third Party being aggrieved by the said judgment appealed to the Court of Appeal at Nairobi being Nairobi COACA No. E301 of 2023 (Kenya United Sports Limited Vs. Auriel Marie Joy Kimemiah & Others) which appeal was filed within the time prescribed by the law.
 - c. That the appeal has high chances of success as per the grounds of appeal filed therein.
 - d. That in the event that the stay of proceedings in this suit is not granted the Appeal will be rendered nugatory and the Applicant will suffer irreparable harm and damage.
 - e. That no prejudice will be occasioned to the parties if the order sought herein granted as they will participate in the Court of Appeal proceedings.
 - f. That it is in the interest of justice that an order for stay of proceedings be granted pending the hearing and determination of the appeal so that it is not rendered nugatory.
3. The Plaintiff/Respondent filed grounds of opposition dated 17th December, 2024. The Plaintiff pleads inter alia;
- a. That the applicant has failed to disclose and/or has misrepresented the following facts;
 - i. That the application and the supporting affidavit are misleading as it credits the judgment dated 4th August, 2022 in ELC 351 of 2008 to the plaintiff herein as opposed to the actual Plaintiff; Auriel Marie Joy Kimemiah.
 - ii. That as the suit herein is consolidated with others, the application cannot be heard and determined before allowing the other parties to this suit an opportunity to be heard.
 - iii. That the application is fully aware that there are other parties involved in this matter and has failed and/or ignored to inform them that they have filed this application which application also affects their suits before this Honourable Court.
 - b. That the application has not demonstrated that they will suffer irreparable harm or prejudice if the current proceedings continue. The Plaintiff/Respondent will no doubt continue to suffer prejudice as their right to ownership is being curtailed despite being a 3rd party purchaser for value without notice.
 - c. That though the appeal is in respect to the ownership of the properties, including the plaintiff's herein, the same is in regards to the claim by the 3rd party against the Plaintiff in ELC 351 OF 2008 (Auriel Marie Joy Kimemiah) whilst the matter herein provides for privity of contract and claim in respect to the 1st Defendant. There is therefore no contradiction and the two can proceed simultaneously.
4. The Plaintiff in ELC 104 of 2020 (Consolidated with this suit) filed a supporting affidavit sworn on 16th December, 2024. Mr. Wangwe deposes that if the Applicant has strong grounds of appeal, then it should move the Court of Appeal to grant stay of execution of that judgment and or stay of these proceedings.
5. That after he filed his suit (104 of 2020) he was asked to wait for the determination of ELC 351 of 2008. That the waiting resulted in delay of prosecution of his case. Hence, granting the orders of stay herein would cause him unnecessary further delay. He deposes at paragraph 13 that the reliefs sought in his



- claim is for compensation and not one for reclaiming the suit land. Therefore, this matter proceeding will not compromise the 3rd Party's appeal.
6. In E380 of 2022, Mr. Bernard Masaka Shinali who is the Plaintiff filed grounds of opposition dated 19th December, 2024 and stated that;
 - i. That the Application is a collateral attack on the Orders that sought the taking out of Third-Party Proceedings.
 - ii. That the Court has no jurisdiction staying proceedings pending the hearing of an appeal against a judgment delivered elsewhere by a Judge of concurrent jurisdiction.
 - iii. That the Plaintiff herein was not a party to the proceedings in Nairobi ELC Number 351 of 2008 and neither is he party to the appeal pending in Nairobi COACA Number E0301 of 2023.
 7. On 19th December, 2024 Directions were taken for filing of submissions within 14 days from 10th January, 2025. The Third-Party Applicant filed submissions dated 30th December, 2024 and submitted inter alia that it filed an appeal which complies with the requirements of order 42(6) of the Civil Procedure Rules. It also submitted that its appeal to the Court of Appeal has high chances of succeeding and proceeded to quote the case of Joseph Gitahi Gachau & Another versus Pioneer Holdings (A) Ltd & 2 Others on what constitutes an arguable appeal.
 8. The Applicant averred that the parties in this matter are the same parties before the Court of Appeal and the subject matter being L.R No. 13873 is also the same. That if they are denied the interim relief they are seeking, their appeal will be rendered nugatory as the Applicant's contestation is that it held a genuine title. That it has considered the issues raised in the grounds of opposition and the replying affidavit of the Plaintiffs/Respondents and they are likely not to suffer any prejudice if the orders sought are granted. The Applicant cited the case of Jane Nyaboke Njagi t/a Njagi Nyaboke & Co vs Dr. Wokabi HCCCA No 322 of 2000 which granted stay of proceedings on the grounds that the Applicant had satisfied the Court that she was in a position to abide by the conditions of the court.
 9. The 1st Defendant filed submissions dated 10th January, 2025 in support of the application. It submitted on what constituted exceptional circumstances in this matter to include;
 - a. there is a high likelihood the Court of Appeal may render a contradictory decision to that of this Honorable Court. In the event that this Court orders the 1st Defendant to refund the Plaintiff monies paid to it for the sale of the Suit Property and the Court of Appeal renders its decision validating the Title of the Third Party herein, the parties will find themselves in a predicament on the way forward.
 - b. The Plaintiff was issued with a valid Title by the 2nd Defendant and enjoys possession of the Property. The 1st Defendant on the other hand, may suffer irreversible monetary loss in the event this Court orders a refund by the 1st Defendant to the Plaintiff and the Court of Appeal reverses the ELC No. E351 of 2008 decision.
 - c. There is also a possibility that the Court of Appeal may refer the matter back to the Superior Court for re-trial. If this Honorable Court will have pronounced itself in favor of the Plaintiff, a quandary shall arise with the 1st Defendant suffering immense prejudice.
 10. The 1st Defendant continued to submit on the doctrine of subjudice as provided for under section 6 of the Civil Procedure Rules by stating that the issues in the instant suit and the said Court of Appeal matter is crystal clear. That the Suit Property herein is one of the 10 subdivisions of Land Reference



No. 13873, which is the subject of the said Appeal and It is inevitable that the decision of the Court of Appeal directly affects the Suit Property.

11. In support of the above point, the 1st Defendant cited the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] KESC 16 (KLR) pronounced itself on the Superior Courts taking judicial notice of matters under adjudication in the Court of Appeal and Supreme Court touching on similar issues thus: -

“The present Appeal was straight-forward and we have settled the questions placed before us for determination. However, before we conclude we must take note of a matter that was brought to our attention at the hearing of this Appeal. While this matter was before us awaiting determination, EK Ogola J, on 10th June 2019, in the High Court of Kenya at Mombasa, rendered a decision in the case of *Juma Nyamawi Ndungo & 5 others v Attorney General; Mombasa Law Society (Interested Party)*, Constitutional Petition No 196 of 2018 [2019] eKLR.

Broadly, some of the issues for determination in that matter included whether the WIBA was unconstitutional in light of *the Constitution* 2010.

We are greatly dismayed that the learned Judge did not take judicial notice of the pendency of this Appeal although he was aware of it. As a matter of fact, he stated so in his judgment that an appeal had been preferred to us against the decision of the Court of Appeal to the apex court on matters whose determination may well have been binding on him. The learned judge ought to have held his horses and acknowledge the hierarchy of the courts and await for this court to pronounce itself before rendering himself, if at all. As we perceive it, his judgment has created unnecessary confusion in the application of WIBA and cannot be allowed to stand as it may [may or is]? also be contrary to this Judgement. The findings and Orders expressed in that judgment must therefore be read in the context of the decision of the Court of Appeal and our finding and Orders in this appeal. That is all there is to say on that matter.”

12. It concluded the submissions by urging the court that due to the similarity of the circumstances, I do allow the application by the third-party seeking orders of stay of proceedings.
13. The Plaintiff in this matter filed his submissions dated 20th December 2024. He avers that the principles for granting stay of proceedings are well laid out in the case of *William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others* [2019] eKLR. That in analyzing those principles vis the present case, he states that they are distinguishable because;
 - i. The Applicant has failed to explain why the stay has not been sought in the higher Court in which an appeal was preferred.
 - ii. The Applicant has failed to demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted. Quite the contrary, it would lead to further backlog of the court contrary to an advocate’s responsibility to ensure the just determination of suits.
 - iii. The Applicant has also failed to demonstrate what exceptional circumstances arise that make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal.
14. He reiterated that the applicant suffers no prejudice if this matter is heard to its conclusion. The Plaintiff Respondent, as well as the other Plaintiffs in the consolidated cases, would on the other hand continue to suffer prejudice. Many of whom are servicing loans from banks to pay for the subject



properties. He cited the case Kenya Wildlife Service Vs James Mutembei (2019) eKLR, where Gikonyo J held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”.

15. In my view proceeding with hearing in this suit would prejudice the 3rd party if their claimants wanted the plaintiff in ELC 351 of 2008 to transfer the impugned land to their before the appeal is determined. Instead all they want from the person who sold them is refund of the purchase price and costs incurred in securing the purchase price (such as interest on bank loans).
16. Thus, this matter proceeding would not in any way interfere with title to the land the subject matter of the pending appeal. The Applicant deposed that unless these proceedings are stayed, its appeal will be rendered nugatory but it does not elaborate how a claim for refund would affect title to land.

Analysis and Determination:

17. I have considered the submissions rendered and the pleadings on record. There is no dispute that all the Plaintiffs in the consolidated files purchased a subdivision of L.R. No. 13783/7 from the 1st Defendant. The 1st Defendant derives its title from the Applicant who was sued in ELC 351 of 2008 where a judgement was rendered on 4. 8. 2022 nullifying the Third Party’s title. There is also no dispute that the third party/Applicant lodged an appeal against the said judgement.
18. Equally, the Plaintiffs in the consolidated suit have not brought any claim as against the third party/applicant. They are seeking refunds of monies paid to the 1st Defendant. The 1st defendant on its part joined the third party which now brings a nexus between these Plaintiffs and the 3rd Party.
19. Order 42 rule 6 states that no appeal shall operate as a stay of execution or proceedings except in so far as the court appealed from may order after showing of sufficient cause. In case where a party is seeking stay of proceedings, the High Court in the case of William Odhiambo Ramogi & 2 Others supra, the High Court discussed the principles that would amount to sufficient cause. I would like to start that parties are bound by their pleadings and the present application was not brought under the provisions of section 6 of the *Civil Procedure Act*. None of the grounds listed in support of the application mentions the same. The 1st Defendant’s submissions referring to the provisions of section 6 in my view is out of context. A party can move the court to stay proceedings under that section but for the application before me, the stay sought is under the provisions of order 42 rule 6.
20. The Applicant argued that if the present cases are allowed to proceed, his appeal would be rendered nugatory which status the Plaintiffs strongly oppose. The question is whether the Applicant has demonstrated it will suffer prejudice arguing that its has high chances of succeeding. I have noted from the pleadings that the Plaintiffs in the consolidated suits are seeking for refunds of monies they paid to the 1st Defendant as purchase price and the attendant costs. By the third party being brought on board, whatever orders that will be made against the 1st Defendant, it would forward them to the 3rd Party.
21. What is the relationship between the present suit and the pending appeal lodged by the Applicant? The present suit (E082 of 2023) was commenced on 20th February 2023; the plaint in E380 of 2022 is dated 14th November, 2022; the claim in e012 of 2023 is dated 16th January 2023. Thus, all the three files were brought post the judgement in ELC 351 of 2008. The claim in ELC 104 OF 2020 was filed



prior to the determination of ELC 351 of 2008 but the court record does show that its prosecution was put in abeyance pending the outcome of that suit. This is discernible from the proceedings stating it be mentioned alongside ELC 351. The hearing date was only fixed after the judgement was delivered on 4th August, 2022.

22. Although the claimants herein are not seeking to transfer the impugned land in ELC 351/2008, their plea for refund of the purchase price and costs incurred in securing the purchase price (such as interest on bank loans) is linked to the order made in the suit 351/2008 cancelling the title held by the 1st Defendant and by extension the Applicant (before sale to the 1st Defendant). The determination of the matter before the Court of Appeal in the event it varies the judgement appealed is likely to affect the pleadings/claim by these Plaintiffs.
23. The inference drawn is that the Plaintiffs were indirectly affected by the outcome of the judgement against the Defendants in ELC 351 and which caused them to file the current suits sought to be stayed. Although stay of proceedings interferes with the rights of parties to access justice, the rights of the parties in this are likely to be impacted with the outcome of the pending appeal. More so the 3rd Party who would be directly affected and be prejudiced if these proceedings are not stayed since any adverse orders directed at the Defendants would be transferred to it to settle.
24. I am therefore persuaded that valuable reasons exist to warrant this court exercise discretion in favour of the Third-Party/Applicant. However, to take into consideration the rights of the Plaintiffs' the stay of proceedings will be given for a limited period only so that the Applicant shall fast track its appeal. The stay of proceedings is granted for a period of eight (8) months and the matters shall be fixed for hearing thereafter. Consequently, the application dated 6th November, 2024 is allowed with costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY, 2025

A. OMOLLO

JUDGE

