

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO 316 OF 2017

FELISTA KAVEZA OMANI PLAINTIFF/RESPONDENT

VERSUS

EMMANUEL ISADIA DEFENDANT/APPLICANT

RULING

The application is dated 19th June 2018 and is brought under sections 1A, 1B, 3, 3A and 6 of the Civil Procedure Act seeking the following orders;

1. That the suit herein be stayed pending the hearing and determination of the intended appeal in the Court of Appeal arising from the decision of this court in Kakamega High Court, ELC No. 19 of 2017.
2. That the cost of this application be provided for.

It is grounded upon the annexed affidavit of Emmanuel Isadia Kimata, the grounds below and the grounds that, the subject matter herein is the same as the one in Kakamega ELC No. 179 of 2017 being L.R. No. South Maragoli/Kegoye/656. This court pronounced ruling in ELC No. 19 of 2017, which ruling the applicant has preferred an appeal. The appeal in the Court of Appeal has been instituted. The parties herein are the same.

The applicant submitted that, the deceased, Raphael Chasimba, had prior to his death instituted Kakamega ELC No. 19 of 2017 against Christina Savai, also deceased and substituted by the respondent herein. That the court made a ruling on 27/6/2018, which ruling he has filed an appeal. (Annexed and marked EK1 is a photostat copy of the notice of appeal. That the subject matter and parties herein are the same. That since the intended appeal has not been heard and determine, it is proper that the matter herein be stayed as the decision of the court of appeal will have an impact on the outcome of this suit. That to avoid conflicting decisions it is proper that the case be stayed.

The respondent submitted that an appeal does not ipso facto operate as a stay of proceedings of a court. That the issues for determination in the instant case vary from the issues in determination in case No. Kakamega ELC 19 of 2017. That furthermore, there has never been a trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties to necessitate a stay of proceedings. That that section 6 of the Civil Procedure Act as relied on by the applicant is designed to prevent courts of parties concurrent jurisdiction from simultaneously adjudicating on a suit with the same parties and the same matter which is not the case between ELC 19/2017 and the instant case which prays for a permanent injunction among others. That counsel for the applicant is simply using the stay of proceedings as a means to negate justice and delay the inevitable.

This court has carefully considered the application and the submissions therein. From the facts adduced before me it is not clear what connection there exists between the two matters to warrant a stay of the present one. Indeed if the parties are the same and the subject matter then it would appear this matter is sub judice. The same can only be established once this matter is heard or the parties produce more evidence. At this point I find this application has no merit and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 16TH DAY OF OCTOBER 2018.

N.A. MATHEKA

JUDGE