



REPUBLIC OF KENYA



**Karanja (Suing as the legal representative of the Estate of Karanja Gaturu) v Kambi & 7 others  
(Environment & Land Case 18 of 2023) [2024] KEELC 83 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 83 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND CASE 18 OF 2023**

**YM ANGIMA, J  
JANUARY 18, 2024**

**BETWEEN**

**AMOS MWANGI KARANJA (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF KARANJA GATURU) ..... PLAINTIFF**

**AND**

**MARATA WANGARI KAMBI ..... 1<sup>ST</sup> DEFENDANT  
KAMAU KARIUKI ..... 2<sup>ND</sup> DEFENDANT  
JOSEPH MAINA KAMBI ..... 3<sup>RD</sup> DEFENDANT  
PETER NDERITU KAMBI ..... 4<sup>TH</sup> DEFENDANT  
CHARLES MUCHINA KAMBI ..... 5<sup>TH</sup> DEFENDANT  
DAVID NJOGU KAMBI ..... 6<sup>TH</sup> DEFENDANT  
SAMWEL KIBOI KAMBI ..... 7<sup>TH</sup> DEFENDANT  
VIRGINIA WAMBUI & STEPHEN NJUGUNA (SUED AS LEGAL  
REPRESENTATIVE OF JOSEPH NGANGA NJUGUNA) ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

**A. 8<sup>th</sup> Defendants' Application**

1. Vide a notice of motion dated 07.11.2023 expressed to be brought under Order 42 rule 6 of the [Civil Procedure Rules](#), 2010 (the Rules) Sections 1A, 1B, 3A and Section 6 of the [Civil Procedure Act](#) (Cap.21), Article 50 and 159(2)(d) of the [Constitution](#) and all enabling provisions of the law the 8<sup>th</sup> Defendant sought a stay of proceedings in this suit pending the hearing and determination of Nyeri Court of Appeal CA E164 of 2023. The said appeal is against the interlocutory ruling and order of this court dated 15.06.2023 dismissing the 8<sup>th</sup> Defendant's application dated 28.11.2022 in which she



had sought, inter alia, the striking out of the Plaintiff's suit for being time-barred under Section 4(1) of the *Limitation of Actions Act* (Cap.22) and a stay of proceedings under Section 6 of the *Civil Procedure Act* (Cap.21).

2. The application was based upon the various grounds set out on the face of the supporting affidavit sworn by Dominic Njuguna Mbigi on 07.11.2023. It was contended that the issue of limitation of actions ought to be determined by the Court of Appeal before the instant suit could be heard on merit. It was further contended that unless the stay sought was granted the pending appeal might be rendered nugatory. It was the 8<sup>th</sup> Defendant's case that the instant application was filed without undue delay and that it was in the interest of justice that the orders sought be granted.

### **B. Plaintiff's Response**

3. The Plaintiff filed a replying affidavit by Nderitu Komu the advocate acting for him sworn on 23.11.2023 in opposition to the application on several grounds. First, it was contended that although the 8<sup>th</sup> Defendant filed a notice of appeal against the ruling of 15.06.2023 she had failed to file the substantive appeal within 60 days from the date of filing the notice and that the record of appeal was filed out of time. Second, it was contended that the matters raised in the application of limitation can still be canvassed at the hearing of the suit and be escalated to the Court of Appeal after judgment. Third, that the 8<sup>th</sup> Defendant had not met the threshold for granting a stay of proceedings hence the application was merely intended to delay the hearing and finalization of the suit. Fourth, that the application was bad in law and otherwise an abuse of the court process. As a consequence, the court was urged to dismiss the application with costs.

### **C. Directions on Submissions**

4. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the 8<sup>th</sup> Defendant's submissions were filed on 07.12.2023 whereas the Plaintiff's submissions were filed on 18.12.2023. There is no indication on record of the rest of the Defendants having filed any submissions.

### **D. Issues for Determination**

5. The court has perused the 8<sup>th</sup> Defendant's notice of motion dated 07.11.2023, the Plaintiff's replying affidavit in opposition thereto as well as the material on record. The court is of the opinion that the following issues arise for determination herein:
  - a. Whether the 8<sup>th</sup> Defendant has made out a case for stay of proceedings in this suit.
  - b. Who shall bear costs of the application.

### **Analysis and Determination**

#### **a. Whether the 8<sup>th</sup> Defendant has made out a case for stay of proceedings in this suit**

6. The court has considered the material and submissions on record on this issue. Whereas the 8<sup>th</sup> Defendant contended that she had satisfied the requirements for the grant of a stay of proceedings, the Plaintiff contended otherwise. The principles to be considered in an application for stay of proceedings



were considered in the case of *Global Tours and Travels Limited* Nairobi H.C. Winding up Cause No. 43 of 2020 as follows:

“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)

7. Similarly, in the case of *Kenya Wildlife Service –vs- James Mutembei* [2019] eKLR Gikonyo J considered the applicable principles for stay of proceedings by quoting the following passages from *Halsbury’s Laws of England*, 4<sup>th</sup> Edition Vol. 37 pages 330 and 332:

“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.”

8. The court is in agreement with the judicial practice which has been adopted in Kenya that the power to order a stay of proceedings should be exercised cautiously and sparingly. The court takes the view that a litigant’s right to have his case adjudicated and determined expeditiously should not be lightly interfered with unless there are exceptional circumstances warranting such interruption.
9. The court is not satisfied on the basis of the material on record that there are justifiable grounds to warrant a stay of proceedings herein. There is no evidence to demonstrate that the 8<sup>th</sup> Defendant’s appeal shall be rendered nugatory unless a stay of proceedings is granted. The court is of the view that whatever decision may be taken by this court upon a full hearing of the suit may still be reversed by the Court of Appeal should it ultimately be found that the Plaintiff’s claim is time-barred.
10. The court finds no evidence to suggest that the Plaintiff’s claim is frivolous, vexatious or groundless. The material on record shows that the suit has been pending in court since 2000. The interest of justice would require that a suit should be heard and concluded expeditiously. Indeed, the overriding objective of the *Civil Procedure Act* (Cap.21) requires that all suits should be heard and determined in a just, expeditious, proportionate and affordable manner.
11. The court has noted that even though the impugned ruling was delivered on 15.06.2023, the 8<sup>th</sup> Defendant did not file the instant application for stay until November, 2023. The delay of about 5



months in filing the application was not explained at all in either the application or the supporting affidavit. It is evident from the provisions of Order 42 rule 6 of the Rules and case law that an application for stay should be filed expeditiously and any period of delay should be satisfactorily explained. In the circumstances of this case, the court is of the opinion that the application was not filed without unreasonable delay and that such delay would disentitle to the 8<sup>th</sup> Defendant to the order of stay.

**b. Who shall bear costs of the application**

12. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason why the successful litigant should be denied costs of the application. Consequently, the Plaintiff shall be awarded costs of the application to be borne by the 8<sup>th</sup> Defendant only.

**F. Conclusion and Disposal Orders**

13. The upshot of the foregoing is that the court finds no merit in the 8<sup>th</sup> Defendant’s instant application. Accordingly, the court makes the following orders for disposal thereof:
- a. The 8<sup>th</sup> Defendant’s notice of motion dated 07.11.2023 be and is hereby dismissed in its entirety with costs to the Plaintiff.
  - b. The suit is hereby fixed for hearing on 25.03.2024.

Orders accordingly.

**RULING DATED AND SIGNED AT NYANDARUA THIS 18<sup>TH</sup> DAY OF JANUARY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Mr. Nderitu Komu for the Plaintiff

Ms. Muchoki for the 1<sup>st</sup> – 7<sup>th</sup> Defendants

N/A for the 8<sup>th</sup> Defendant

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

