



Mbari (Suing as the legal representative of the Estate of Jason M'Mbari Murugi alias Jason M'Mbari Murugi) v Njoka & 2 others (Environment and Land Appeal E020 of 2024) [2025] KEELC 981 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 981 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND APPEAL E020 OF 2024
BM EBOSO, J
FEBRUARY 27, 2025**

BETWEEN

MOSES NJAGI MBARI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JASON M'MBARI MURUGI ALIAS JASON M'MBARI MURUGI) APPLICANT

AND

JULIET CIAKATHIA NJOKA 1ST RESPONDENT

ERASTUS NYAGA NJOKA (SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF JAKHIN NJOKA – DECEASED) 2ND RESPONDENT

MICHENI NJOKA 3RD RESPONDENT

(Being an appeal against the ruling of the Chief Magistrate Court at Chuka, The Hon Joyce Gandani, Chief Magistrate, delivered on 11/12/2024 in ELC No 71 of 2019)

RULING

1. Falling for determination in this ruling is the applicant's notice of motion dated 17/12/2024, through which he seeks an order staying further proceedings in Chuka CMC E&L Case No 71 of 2019, pending the hearing and determination of Chuka ELC Appeal No. E020 of 2024. The application was premised on the grounds outlined in the motion and in the supporting affidavit sworn by Moses Njagi Mbari. It was canvassed through written submissions dated 5/2/2025, filed by Murimi Murango & Associates.
2. The case of the applicant is that, he instituted Chuka CMC E&L Civil Case No 71 of 2019 against the three respondents seeking, among other reliefs, a declaration that the land known as Chuka Township No 7 belongs to the estate of the late Jason M'Mbari Murungi alias Jason M'Mbari M'Murungi. The respondents contested the suit through a defence dated 5/10/2020. Trial began and he led evidence



and closed his case. Subsequently, the respondents filed an application under certificate of urgency, seeking leave to amend their defence. The plea for leave to amend the defence was allowed vide a ruling rendered on 24/8/2022.

3. The applicant adds that subsequent to that, the respondents filed a notice of preliminary objection dated 10/1/2023, urging the Court to strike out the applicant's suit on the ground that it was statute-barred. The preliminary objection was dismissed vide a ruling dated 13/12/2023. Subsequently, the respondents filed an application dated 13/8/2024 at the trial Court, seeking joinder of the Director of Surveys and the Land Registrar as the 4th and 5th defendants in the suit. The respondents further sought an order that the duo be given timelines within which to file their defences. The lower Court subsequently rendered a ruling on the application on 11/12/2024, in which it allowed the plea for joinder. Dissatisfied with the ruling, he brought this appeal.
4. The applicant contends that the appeal raises substantial and arguable grounds with high chances of success. The applicant further contends that unless the order of stay of proceedings is granted, the respondents will proceed with further steps in the suit, thereby rendering the appeal nugatory, and this will prejudice him. The applicant adds that he made the application without undue delay.
5. The respondents opposed the application through a replying affidavit dated 8/1/2025, sworn by Jamleck Micheni Njoka and written submissions dated 25/2/2025, filed by M/s Brian Otieno & Co Advocates. The respondents' case is that an order of stay of proceedings is a grave judicial action which would seriously interfere with their right to conduct their litigation and hinder their right to justice; their right to be heard without delay; and their right to fair trial. They rely on the decision in Kisumu High Court Civil Appeal No 124 of 2022 in which the Court ruled that the test for stay of proceedings is high and stringent. They contend that the applicant's intention is to prolong the matter which is at an advanced. They add that the applicant's appeal is devoid of merit, hence the application should be rejected. Lastly, they contend that the applicant has failed to demonstrate any likely prejudice to him were the Court to reject the plea for an order of stay of proceedings. They urge the Court to reject the application.
6. The Court has considered the application, the response to the application, and the parties' respective submissions. The Court has also considered the relevant legal frameworks and the applicable jurisprudential principles. The single question falling for determination in this ruling is whether the application satisfies the criteria upon which our courts exercise jurisdiction to grant an order of stay of further proceedings in the lower court pending the hearing and determination of an appeal in a third tier superior court.
7. Jurisdiction of this court to grant an order of stay of further proceedings pending the hearing and determination of an appeal is anchored on the framework in Order 42 (6) (1) of the Civil Procedure Rules. The objectives of that jurisdiction are diverse. First, it serves to avoid wastage of valuable judicial time. Second, it serves to prevent duplication of judicial efforts. Third, it serves to prevent a situation where a successful appeal is rendered nugatory through disposal of a matter that is the subject of the appeal while the appeal is pending determination by the appellate court.
8. Our superior courts and courts in the Commonwealth jurisdictions have developed clear principles that guide the exercise of this jurisdiction. First, this jurisdiction is an exercise of discretion by the court, and the discretion is exercised judiciously in the interest of justice. Second, a party seeking an order of stay of proceedings pending an appeal must satisfy two requirements: (i) that he has an arguable appeal; and (ii) that unless the stay order is granted, the appeal would be rendered nugatory if it ultimately succeeded (see the Court of Appeal decision in David Morton Silverstein Vs Atsango Chesoni [2002]eKLR). Third, the application for an order of stay of further proceedings must be made



without unreasonable delay. Fourth, the factors that guide the courts when exercising this jurisdiction vary depending on the facts of each case. The Court of Appeal observed in *David Morton Silverstein Vs Atsango Chesoni* [2002]eKLR that an arguable appeal is one that is predicated on a point that is not frivolous.

9. On whether or not an intended appeal would be rendered nugatory, the Court of Appeal held in *Kenya Commercial Bank Limited v Benjoh Amalgamated Limited & Another - Civil Application No Nairobi 50 of 2001 (29/2001 UR)* that the question is to be determined based on the facts of each case.
10. Ringera J (as he then was) pronounced himself on the jurisdiction to grant an order of stay of proceedings pending appeal in *Re Global Tours & Travel Ltd HCWC No. 43 of 2000* 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 the case, 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.”
11. Has the applicant demonstrated that he has an arguable appeal? The applicant contends that, at the point when the trial court allowed joinder of new parties and directed the new parties to file their defences, he [the applicant] had led evidence and closed his case. The applicant argues that he stands to be prejudiced by the impugned decision of the trial court.
12. Without making any definitive or conclusive pronouncement on the issues in the appeal, it is discernible from the materials placed before this Court that, whereas the impugned ruling was rendered after the applicant had led his evidence and closed his case, the ruling is silent on the fate of the applicant’s closed case. Is there a probability of prejudice to the applicant were the status quo of his case to be maintained and adverse pleadings and adverse evidence are introduced at this point? This, in my view, is an arguable point on which all the parties will be expected to address the court in this appeal. The Court is satisfied, in this regard, that the applicant has demonstrated that he has an arguable appeal. It must, however, be observed that an arguable appeal is not necessarily one that will succeed.
13. It is also clear from the materials presented to the Court that were this Court to let trial in the lower Court proceed while this appeal is pending disposal, there would be the likelihood of wastage of judicial time and duplication of judicial efforts. Indeed, were the suit in the trial court to be disposed and enforcement ensues while the appeal is pending, the appeal would be rendered nugatory.
14. The impugned decision was rendered on 11/12/2024. The appeal was filed on 17/12/2024. The present application was filed on 17/12/2024. There is therefore no evidence of unreasonable delay.
15. For the above reasons, the court is satisfied that the application dated 17/12/2024 meets the criteria for grant of an order of stay of proceedings pending the hearing and disposal of an appeal. The Court is, however, alive to the fact that the record of appeal has been filed and this appeal can be disposed in no more than 180 days. Consequently, the stay of proceedings will be for only 180 days.
16. On costs, this is an interlocutory application within an appeal. For this reason, costs will be in the appeal.



17. In the end, the application dated 17/12/2024 is allowed in the following terms:

- a. There shall be stay of proceedings in Chuka Chief Magistrate Court Environment and Land Case No 71 of 2019 pending the hearing and determination of Chuka Environment and Land Court Land Appeal No E020 of 2024.
- b. Unless extended by an order of this Court, the above stay order shall lapse on expiry of 180 days reckoned from today.
- c. Costs of the application shall be in the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 27TH DAY OF FEBRUARY, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Court Assistant – Mwangi

Ms. Makoli Advocate for the Applicant

Mr. Lumumba for the Respondents

