



**Karanja v Machira (Environment and Land Appeal E054 of 2023)  
[2024] KEELC 865 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 865 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E054 OF 2023**

**JO MBOYA, J  
FEBRUARY 22, 2024**

**BETWEEN**

**AMINAH ABDILAH KARANJA ..... APPELLANT**

**AND**

**JOHN PATRICK MACHIRA ..... RESPONDENT**

**RULING**

**Introduction and Background:**

1. The Appellant/Applicant has approached the Honourable court vide Notice of Motion Application dated the 2<sup>nd</sup> February 2024; and in respect of which the Applicant has sought for the following reliefs; [verbatim];
  - i. ....Spent.
  - ii. That this Honorable court be pleased to order stay of proceedings of the Magistrate’s Court case Number (MCCC/6812/2018) pending the hearing and determination of the Appeal herein.
  - iii. That this Honorable court be pleased to order stay of proceedings of the Magistrate’s Court Case Number (MCCC/6812/2018) pending the hearing and determination of the Appeal herein.
  - iv. That the costs of this Application be provided for
2. The instant Application is premised and anchored on two [2] grounds which have been highlighted in the body thereof. Furthermore, the instant Application is supported by the affidavit of the Appellant/Applicant sworn on even date.



3. Upon being served with the subject Application, the Respondent herein filed Grounds of opposition dated the 16<sup>th</sup> February 2024; and in respect of which same has highlighted a plethora of issues, *inter-alia*, that the suit before the Chief Magistrate's court relates to land and hence same is not subject to the 6-year limitation period circumscribed by dint of Section 4 of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya.
4. On the other hand, the Respondent herein has stated that the stay of proceedings which is sought by and on behalf of the Appellant/Applicant is a grave order, which ought to issued and/or be granted reluctantly, albeit with the necessary circumspection.
5. Be that as it may, the subject Application came up for hearing on the 19<sup>th</sup> February 2024; whereupon the advocates for the respective Parties covenanted to canvass the Application by way of oral submissions. Suffice it to point out that both Parties were thereafter granted the liberty to and indeed highlighted the salient features of the Application beforehand.

### **Parties' Submissions:**

#### **a. Appellant's/Applicant's submissions:**

6. The Appellant/Applicant adopted the grounds contained at the foot of the Application as well as the contents of the supporting affidavit. Furthermore, learned counsel for the Applicant thereafter highlighted two [2] salient and pertinent issues for consideration by the Honourable court.
7. Firstly, Learned counsel for the Applicant has submitted that the suit before the Chief Magistrate's court touches on and/or concerns a sale agreement which was entered into and executed by the Parties on the 2<sup>nd</sup> August 2008. In any event, Learned counsel for the Applicant has further contended that upon the entry into and execution of the sale agreement, the Respondent herein made part payments towards the liquidation of the purchase price, which payments were made in the year 2008.
8. Arising from the fact that the sale agreement which forms the subject of the suit before the Chief Magistrate's Court was executed on the 2<sup>nd</sup> August 2008, Learned counsel for the Applicant has contended that the suit which was filed before the Magistrate's Court was thus filed outside the limitation period. Consequently and in this regard, learned counsel for the Applicant has thus invited the court to find that the question of limitation goes to the Jurisdiction of the Chief Magistrate's Court.
9. Secondly, Learned counsel for the Applicant has submitted that even though the question of limitation was raised and canvassed before the Chief Magistrate's, same did not receive appropriate interrogation and hence the dismissal of the Application which sought to strike out the suit.
10. Notwithstanding the foregoing, Learned counsel for the Applicant has contended that the issue of limitation is still ripe and thus this Honorable court ought to interrogate whether or not the suit before the Chief Magistrate's Court is barred by the *Limitation of Actions Act* or otherwise, before the suit can be allowed to proceed.
11. Premised on the foregoing, Learned counsel for the Appellant has thus invited the court to find and hold that it would be in the interests of Justice to stay the proceedings before the Chief Magistrate's Court pending the determination of the question of limitation.
12. In a nutshell, Learned counsel for the Applicant has thus contended that the subject Application meets and/or satisfies the requisite threshold envisaged under the Provisions of Order 42 Rule 6[1] of the *Civil Procedure Rules, 2010*; to warrant the issuance of the orders of stay of proceedings.



**b. Respondent's submissions:**

13. Learned counsel for the Respondent adopted the contents of the Grounds of opposition dated the 16<sup>th</sup> February 2024; and thereafter highlighted and canvassed five [5] pertinent issues for consideration by the court.
14. First and foremost, Learned counsel for the Respondent has submitted that the Applicant herein has neither placed nor tendered any credible material before the Honourable court to warrant the grant and/or issuance of the orders of stay of proceedings, either as sought or at all.
15. Further and in any event, Learned counsel for the Respondent has pointed out that an order of stay of proceedings can only be issued and/or be granted upon the demonstration of a sufficient cause and not otherwise. Instructively, Learned Counsel has contended that no such cause has been established and/ or demonstrated by the Appellant/ Applicant.
16. Secondly, Learned counsel for the Respondent has submitted that even though the Appellant/ Applicant is complaining against the ruling which was rendered by the Chief Magistrate and the sale agreement, same has however failed to annex and/or exhibit copies of the said documents.
17. Premised on the foregoing, Learned counsel for the Respondent has thus contended that in the absence of a copy of the ruling and sale agreement, it will not be possible for the Honourable court to assess whether or not the issue of limitation being canvassed by the Applicant is merited or otherwise.
18. Thirdly, Learned counsel for the Respondent has submitted that the Applicant herein has neither established nor demonstrated any evidence of prejudice, hardship and/or injustice, which same is likely to suffer or accrue, unless the orders of stay of stay of proceedings are granted.
19. To the extent that no prejudice and/or hardship has been alluded to, learned counsel for the Respondent has contended that the stay of proceedings ought not to be granted.
20. Fourthly, Learned counsel for the Respondent has submitted that the ruling which was issued and delivered by the Chief Magistrate's Court related to an Application and thus gave rise to an order and not a decree. Consequently and in this regard, learned counsel for the Respondent has submitted that the Appeal beforehand ought to have been filed with leave and not otherwise.
21. Nevertheless, learned counsel for the Respondent has pointed out that no leave was ever sought for and/or obtained prior to the filing of the instant appeal and hence the application for Stay of Proceedings under reference, is said to be anchored on [sic] an incompetent appeal.
22. Lastly, learned counsel for the Respondent has submitted that though the issue of limitation goes to the Jurisdiction of the court, same is an issue which can still be interrogated and canvassed during the plenary hearing.
23. Based on the foregoing, learned counsel for the Respondent has implored the Honourable court to find and hold that the instant Application does not disclose any sufficient material to warrant the grant of the orders of stay of proceedings, either in the manner sought or at all.

**Issues for Determination:**

24. Having reviewed the Application beforehand as well as the Response thereto; and upon consideration of the oral submissions ventilated on behalf of the respective Parties, the following issues do emerge and are thus worthy of determination;



- i. Whether the Applicant has demonstrated a sufficient cause or basis to warrant the orders sought.
- ii. Whether the Applicant has satisfied the requisite threshold to warrant the grant of an Order of stay of proceedings, either in the manner sought or at all.

### **Analysis and Determination:**

#### **Issue number 1**

#### **Whether the Applicant Has Demonstrated a Sufficient Cause or Basis to Warrant The Orders Sought.**

25. The Appellant/Applicant admits and acknowledges that same entered into and executed a sale agreement with the Respondent on the 2<sup>nd</sup> August 2008. Furthermore, the Applicant herein also acknowledges that the Respondent made part payments towards the liquidation of the purchase price.
26. However, the Applicant contends that even though the sale agreement was entered into and executed on the 2<sup>nd</sup> August 2008, the Respondent herein did not file and/or commence the suit before the Chief Magistrate's Court until the year 2018, which is contended to be well outside the limitation periods.
27. Arising from the contention that the suit before the Chief Magistrate's Court was filed outside the limitation period and in contravention of the provisions of the *Limitations of Actions Act*, Chapter 22, Laws of Kenya; the Appellant/Applicant herein proceeded to and filed an Application seeking to strike out the suit. In any event, it is the said Application which was heard and disposed of vide the ruling delivered on the 24<sup>th</sup> November 2023.
28. Arising from the subject ruling, the Applicant felt aggrieved and/or dissatisfied and hence same has since filed a Memorandum of Appeal dated the 29<sup>th</sup> November 2023.
29. It is appropriate to point out and underscore that the Applicant herein has since taken appropriate steps towards exercising her undoubted right of appeal and in particular, same has filed the requisite Memorandum of Appeal.
30. Similarly, it is worthy to outline that the Memorandum of Appeal which has since been filed by the Applicant *ex-facie*, raises pertinent issues that merit/ deserves due interrogation and/or investigations, albeit at the opportune time.
31. Pertinently, the Applicant herein contends that the suit before the Chief Magistrate's Court relates to and concerns breach of contract and thus same ought to have been filed within 6 years from the date of breach thereof. For coherence, the Applicant herein would wish to ventilate the position that the suit was time barred and ought not to be entertained by the Chief Magistrate.
32. To my mind, the Memorandum of appeal which has been filed before this Honourable Court raises and espouses arguable point[s], which can only be interrogated and addressed during the hearing of the Appeal.
33. Furthermore, having found and held that the Appeal filed by the Applicant raises arguable issues, it then means that the Applicant herein has indeed established and demonstrated the existence of a sufficient cause, which is underpinned by a Memorandum of Appeal that espouses arguable points for consideration.



34. Premised on the foregoing analysis, I find and hold that the Applicant herein has certainly established and demonstrated the existence of a sufficient cause, which is an essential pre-requisite to the invocation of the jurisdiction of the court towards procuring an order of stay of proceedings.
35. As pertains to what constitutes sufficient cause, it suffices to adopt, restate and reiterate the holding of the Court in the case of *Wachira Karani versus Bildad Wachira* [2016] eKLR, where the court held as hereunder;

“It’s important for me to mention that in the above case, the court defined what constitutes sufficient cause and, in this respect, the following paragraph is highly relevant to the issues before me:-

“Once the defendant satisfies the court on either, the court is under duty to grant the application and make the order setting aside the ex parte decree, subject to any conditions the court may deem fit. However, what constitutes ‘sufficient cause’ to prevent a defendant from appearing in Court, and what would be ‘fit conditions’ for the court to impose when granting such an order, necessarily depend on the circumstances of each case.

Although it is an elementary principle of our legal system, that a litigant who is represented by an advocate, is bound by the acts and omissions of the advocate in the course of the representation, in applying that principle, courts must exercise care to avoid abuse of the system and or unjust or ridiculous results. A litigant ought not to bear the consequences of the advocates default, unless the litigant is privy to the default, or the default results from failure, on the part of the litigant, to give the advocate due instructions”

The applicant is required to satisfy to the court that he had a good and sufficient cause. What does the term “sufficient cause” mean.? The Court of Appeal of Tanzania in the case of *The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others* [9] discussing what constitutes sufficient cause had this to say:-

“It is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant” (Emphasis added)

In *Daphene Parry vs Murray Alexander Carson* [10] the court had the following to say:-

“Though the court should no ‘doubt’ give a liberal interpretation to the words ‘sufficient cause,’ its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, .....”

[Emphasis added].

36. In a nutshell, my answer to issue number one [1] is to the effect that the Applicant herein has indeed established and demonstrated sufficient cause, which is a precursor to the invocation of the Jurisdiction of this Honorable court.



## Issue Number 2:

### **Whether The Applicant Has Satisfied The Requisite Threshold to Warrant the Grant of an Order Of Stay Of Proceedings, Either in the Manner Sought or At All.**

37. The Application beforehand seeks to procure an order of stay of proceedings, with a view to staying any further proceedings pertaining to and concerning Milimani MCELC 6812 of 2018.
38. To the extent that the application seeks an order of stay of proceedings, it is appropriate to point out and indeed to outline that an order of stay of proceedings is a grave order, taking into account the consequences attendant thereto, inter-alia, the suspension of the impugned proceedings awaiting the determination of the Appeal; or better still, occurrence of an event.
39. Given the grave consequences attendant to an order of stay of proceedings, it is settled law that such an order therefore ought to issue and/or be granted sparingly and with necessary circumspection, taking into account the obtaining circumstances.
40. Furthermore, it is also trite and established that an Applicant who seeks to procure an order of stay of proceedings must demonstrate and establish the prejudice, hardship and/or injustice that same is disposed to suffer, unless the Orders sought are granted. In addition, the Applicant must also demonstrate the existence of exceptional circumstances.
41. To this end, it is appropriate to take cognizance of various decisions where the question of stay of proceedings have been addressed and the requisite ingredients to be established prior to the issuance of such an order.
42. Firstly, I beg to take cognizance of the holding in the case of *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000; where the Honourable Court stated thus;

“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)

43. Similarly, the circumstances to be taken into account whilst considering whether or not to grant an order of stay of proceedings were also highlighted in the case of *Kenya Wildlife Service versus James Mutembei* [2019] eKLR, where the court held thus;
  - (5) I have carefully considered the instant application and the rival submissions by the parties. This is essentially an application for stay of proceedings in Maua CMCC 46 of 2017 *James Mutembei v Kenya Wildlife Service* pending the hearing and determination of this appeal. Stay of proceeding 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.



44. Other than decided case law, the circumstances to be considered whilst addressing the issue of stay of proceedings have also been amplified and elaborated upon vide *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, that:

“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.”

45. Nourished by the position espoused in the various decisions and text,[ highlighted in the preceding paragraphs], it is now appropriate to venture forward and to discern whether the Applicant herein has met the requisite threshold for the grant the orders of stay of proceedings.
46. In this respect, I wish to point out that the critical question that underpins the appeal is whether or not the suit before the Chief Magistrate’s Court is barred by the Limitation of Actions or otherwise. Instructively, there is no gainsaying that limitation goes to the root of the jurisdiction of the court and hence if same is established, then the impugned suit would be vitiated and/or negated.
47. On the other hand, there is the question of the necessity to have proceedings heard and determined expeditiously and without undue delay. For clarity, the need for expedition is underpinned by the provisions of Article 159(2)(b) of the *Constitution* 2010.
48. Notwithstanding the foregoing, the critical question that the court must engage with is whether or not the suit before the Chief Magistrate’s Court should be allowed to proceed, despite the lingering contestation touching on and concerning its validity.
49. Additionally, there is also the question that courts of law, this court not excepted, is called upon to ensure that precious Judicial time, [which is the only resource available to the Judicial Officer and Judges], is utilized justly and proportionately.
50. Taking the two [2] perspectives, which have been highlighted in the preceding paragraphs into account, I hold the humble view that given the significance of Jurisdiction in the courts endeavor to hear and determine suits, where the Jurisdiction in question, then a court of law needs to interrogate and determine same [Jurisdiction] before any further proceedings are taken in the matter.
51. To this end, it is appropriate to take cognizance of the dictum in the case of *Owners of Motor Vessel Lilian S vs Caltex Oil (K) Ltd* (1989) eKLR, where the court stated and held thus;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without Jurisdiction.”



52. In light of the foregoing, it is my considered view that it may turn out to be an exercise in futility, if the proceedings in the Chief Magistrate's court were to be allowed to proceed, only for this court to find and hold that same (suit) was invalid and a nullity on account of Limitation of Action Act.
53. To my mind, such a scenario would be tantamount to misuse and/or abuse of the precious judicial time, which ought to be deployed proportionately.
54. In a nutshell, I come to the conclusion that there is good basis to warrant the grant of an order of stay of proceedings, so as to halt the proceedings before the Chief Magistrate's court, pending the determination of the Jurisdictional question underpinned by the Limitation of Actions Act.
55. On the other hand, I hold the view that the stay of proceedings shall not prejudice and/or in any manner, cause any injustice to the Respondent, insofar as the appeal beforehand can be processed and indeed be disposed of within the next 6 months.

**Final Disposition:**

56. Having considered the various issues that were highlighted herein before, it must have become crystal clear that the Applicant herein has satisfied the [2] critical issues which are necessary prior to and/or before the grant of an order of stay of proceedings.
57. Furthermore, the court has observed that the continuation of proceedings before the Chief Magistrate's court, during the pendency of this appeal, may turn out to be an exercise in futility, if [I say if] the appeal herein were to succeed.
58. Consequently and in the premises, the Application dated the 2<sup>nd</sup> February 2024; be and is hereby allowed on the following terms;
  - i. There be and is hereby granted an order of stay of proceedings in respect of Milimani Chief Magistrate's Court Case No. MCCC 6812 of 2018, pending the hearing and determination of Milimani ELCA No. E054 of 2023.
  - ii. The Appellant herein be and is hereby ordered to procure the requisite proceedings and thereafter to compile and file the Record of Appeal within 60 days from the date hereof.
  - iii. In default to compile and file the Record of Appeal within the stipulated timelines, the orders of stay of proceedings herein shall automatically lapse.
  - iv. In the event that the Record of Appeal is compiled and filed with the set timeline, the matter herein shall be listed for directions in accordance with the provisions of Order 42 Rule 13 of the Civil Procedure Rules 2010.
  - v. Costs of the Application shall abide the outcome of the Appeal.
59. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024.**

**OGUTTU MBOYA**

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**JUDGE**

In the presence of:

Benson – Court Assistant.



Ms. Waweru for the Appellant/Applicant.

Mr. Thuita Kiiru for the Respondent.

