



**Ngetich v Goren & another (Civil Application E021 of 2024)  
[2025] KECA 565 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 565 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E021 OF 2024  
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA  
MARCH 28, 2025**

**BETWEEN**

**ALEX KIPROTICH NGETICH ..... APPLICANT**

**AND**

**JOHN KIBIEGO GOREN ..... 1<sup>ST</sup> RESPONDENT**

**APTON GOREN ..... 2<sup>ND</sup> RESPONDENT**

*(An application for stay of proceedings from the ruling and order  
of the Environment and Land Court at Kapsabet (M.N. Mwanyale,  
J.) delivered on 28th February 2024 in ELC Case No. E001 of 2023)*

**RULING**

1. By Notice of Motion dated 22<sup>nd</sup> April 2024, the applicant invoked rule 5 (2) (b) of this [Court's Rules](#) 2022 seeking a stay of proceedings in Kapsabet ELC Case No. E001 of 2021 pending the hearing and determination of his appeal before this Court namely Eldoret Civil Appeal No. E035 of 2014. The application is supported by the grounds on its face and the affidavit of the applicant sworn on 22<sup>nd</sup> April 2024.
2. The gist of the Motion is that the respondents sued the applicant in Kapsabet ELC Case No. E001 of 2021. Upon being served with the pleadings, the applicant filed a Notice of Motion dated 15<sup>th</sup> February 2024 seeking to strike out the suits on the ground of limitation of time. By ruling dated 28<sup>th</sup> February 2024, M.N. Mwanyale, J. found that the application lacked merit and was accordingly dismissed.
3. The applicant is dissatisfied with those findings arguing that though the learned judge acknowledged that the suit, being for recovery of land, was time barred, he nonetheless proceeded to dismiss his application. He further lamented that the trial court lacked jurisdiction to hear and determine the subject matter. In the circumstances, the applicant argued that to allow the suit to proceed to trial court



would amount to a miscarriage of justice. Finally, he added that if stay was not granted, the appeal would be rendered nugatory.

4. The application is opposed. The 2<sup>nd</sup> respondent swore an affidavit on his behalf and on behalf of the 1<sup>st</sup> respondent on 9<sup>th</sup> May 2024. He urged this Court to dismiss the application with costs on account of the following grounds: the application was brought in bad faith, misconceived and a waste of the Court's precious time; the application was intent on delaying the suit at trial; the application was lodged with inordinate delay having been filed two months after the impugned ruling was delivered; the application failed to satisfy the twin test requirement; the application was premature as the suit was yet to be heard; no grave injustice or prejudice was demonstrated as to justify the orders sought; and it was in the interest of justice that the trial court does proceed with the substantive dispute before moving to this Court for appeal.
5. The application was disposed of by way of written submissions that were orally highlighted on 12<sup>th</sup> March 2025. Learned Counsel Mr. Mokuia together with Learned Counsel Mr. Maranga were present for the applicant while Miss. Oduor Learned Counsel for the respondent was also present.
6. In the written submissions and case digest both dated 20<sup>th</sup> May 2024, Counsel for the applicant submitted that the appeal filed, namely Eldoret Civil Appeal No. E035 of 2014 was arguable on account of the fact that the trial court lacked the requisite jurisdiction to hear and determine the matter and secondly, the suit was statutorily barred. On the nugatory aspect, it was submitted that if stay was not granted, the trial court would proceed to hear and determine the dispute when there is a real likelihood that the trial court did not have jurisdiction to entertain the subject matter. The applicant urged this Court to allow the application as prayed.
7. The respondents filed their joint written submissions, case digest and list of authorities all dated 10<sup>th</sup> June 2024 to submit that the application, seeking stay of proceedings pending an interlocutory appeal, did not meet the exceptional threshold for grant of such orders. Learned Counsel submitted that since the impugned ruling was not attached to the application, the applicant failed to prove that the appeal was arguable. On the nugatory aspect, the applicant failed to demonstrate that the appeal will be rendered an academic exercise if stay is not granted. In any event, learned counsel continued that the applicant would still have the opportunity to appeal against the decision once the suit is heard on its merits. Citing that the application was filed with inordinate delay, the respondents urged this Court to dismiss the application with costs.
8. We have considered the application, the affidavit in support, the annexures thereto as well as the affidavit in opposition. We have also examined the parties' written submissions and analyzed the law. To succeed, an applicant must satisfy the following twin conjunctive principles in an application under rule 5 (2) (b) of this *Court's rules*: that the appeal is arguable and would be rendered nugatory if stay is not granted.
9. On arguability of the appeal, the application has raised two questions: whether the trial court has jurisdiction to hear the suit and whether the suit is time barred. In our view, those are not idle issues. The test is whether they are arguable, though they may not finally succeed. The question whether those issues will be successful is for the bench that will hear and determine the appeal. We say no more.
10. On the nugatory aspect, we are alive to the fact that each case must depend on its own facts and peculiar circumstances. Furthermore, whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved. [See *Stanley Kangethe Kinyanjui v. Tony Ketter & 5 others* [2013] KECA 378 (KLR)].



11. Will the appeal be rendered nugatory if stay of proceedings are not granted? The applicant contended that if stay was not granted, the trial court would determine the dispute when there is a real likelihood that it does not have the jurisdiction to entertain the subject matter. In our view, the applicant has failed to demonstrate how the appeal will be rendered an academic exercise. The apprehension meted out by the applicant can be raised in his defence and ably demonstrated with evidence before the trial court. In addition, those questions can be raised in an appeal if the applicants are not successful in the trial court. We are not satisfied that if stay is not granted, the decision of the trial court will be irreversible. In any event, and as pointed out by the respondent, it is in the best interest of the parties to have the substantive dispute proceed to its logical conclusion.
12. Having established that the applicant has not satisfied one of the conditions precedent, this application is for dismissal. In the circumstances, we find that the application herein lacks merit. It is dismissed with costs to the respondents.

**DATED AND DELIVERED AT NAKURU THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

**J. MATIVO**

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**JUDGE OF APPEAL**

**M. GACHOKA C. Arb, FCI Arb.**

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**JUDGE OF APPEAL**

**G. V. ODUNGA**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

*signed*

**DEPUTY REGISTRAR**

