



**Mutinda & another v Ndaou (Land Case Appeal E002 of 2025)
[2025] KEELC 900 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 900 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
LAND CASE APPEAL E002 OF 2025
EK WABWOTO, J
FEBRUARY 26, 2025**

BETWEEN

BRENDA G MWALI MUTINDA 1ST APPLICANT

TITUS MUKOMA MBATHA 2ND APPLICANT

AND

AMANDA NERRISSA NDAU RESPONDENT

RULING

1. The motion dated 19th February 2025 seeks stay of the proceedings of the Voi CMCELC No. E023 of 2024 and or the implementation of the ruling delivered by Hon. C.K. Kithinji PM on 21st January 2025 which ruling barred the firm of Mwinzi & Associates from representing the Applicants in that matter. The Applicants being aggrieved by the said ruling filed the instant appeal vide a memorandum of appeal dated 11th February 2025. Contemporaneous to the filing of the said appeal the Applicants also filed the application dated 19th February 2025 which is now subject of the appeal.
2. The issue before court is whether this court should stay the lower court proceedings pending the hearing and determination of the appeal.
3. The application was canvassed by way of oral submissions made by Counsel for the parties. Learned Counsel Mr. Mwinzi submitted on behalf of the Applicants while Learned Counsel Mr. Mwazighe submitted on behalf of the Respondent.
4. In considering the application and the parties' submissions at this stage, this court must be frugal in its words and warn itself that it should be careful not to pronounce itself on issues that may prejudice the outcome of the appeal since the appeal is still pending.
5. A court may issue a stay of proceedings after an appeal has been filed though the mere filing of an appeal does not mean that the proceedings must be stayed. The court must be persuaded that there is



sufficient cause to do so. The principle for granting stay of proceedings which in my view applies to the instant case is whether the application has been made without unreasonable. The reason is that unlike stay of execution, which requires that three conditions be met before grant of stay of execution, the same is quite different for stay of proceedings pending appeal.

6. In Re Global Tours & Travels Limited, (Nairobi High Court Winding Up Cause No. 43 of 2000), Ringera, J (as he then was) opined 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.”

7. As I understand the genesis of the matter is that the law firm of Mwinzi & Associates acted for parties in the sale agreement leading to the acquisition of the suit property and which are the subject of the litigation herein. The Respondent objected to the representation of the Applicants by the said firm of Advocates pursuant to the preliminary objection filed on 24th October 2024 and the Learned Magistrate did uphold the said preliminary objection vide her ruling delivered on 21st January 2025.

8. The removal of an advocate from representing a client is not to be taken lightly as the litigant who appointed such advocate enjoys the constitutional right to be represented by an advocate of his choice and the right to a fair hearing. Thus, in Jopa Vilas LLC v Overseas Private Investment Corp & 2 Others [2014] eKLR the Court of Appeal in emphasizing the gravity of the matter stated as follows:

“The Supreme Court of Samoa in Apia Quality Meats Limited v Westfield Holdings Limited [2007] 3 LRC 172 held on the subject of removal of an Advocate from proceedings that such an application had to be considered under the relevant legal principles on the courts exercise of inherent jurisdiction to control the conduct of the proceedings and those who appeared before it as counsel. The factors to be considered were such factors as conflict of interest, actual or potential breach of the duty to protect confidential information, or misconduct. It was further held that removal of an Advocate from acting for a party in proceedings was an extraordinary and drastic remedy to be contemplated only in the most extraordinary circumstances, requiring misconduct so serious that removal was the only way of safeguarding the future integrity of the proceedings.”

9. As observed by O’Kubasu J. A. (as he then was) in William Audi Odode & Another v John Yier & Another Court of Appeal Civil Application No. NAI 360 of 2004:

“...[I]t is not the business of the courts to tell litigants which advocate should or should not act in a particular matter. Indeed, each party to a litigation has the right to choose his or her own advocate and unless it is shown to a court of law that the interests of justice would not be served if a particular advocate were allowed to act in a matter, the parties must be allowed to choose their own counsel.”



10. In addressing my mind to the above principles in the cited authorities and bearing in mind the nature of what is before this court being an appeal arising from a ruling in respect to a preliminary objection and, taking into consideration that the courts must ensure that justice is done, I find it necessary to exercise my discretion in favour of the Applicants.
11. I note that the memorandum of appeal and the instant application have been filed without delay and it would only be fair that the parties are heard. I do also realise that the applicant is yet to file his record of appeal. However, considering the rights of a party to be heard even on appeal, this court would only operate so within timelines to ensure that the successful party does not take advantage of the stay to the detriment of the other party.
12. In this case, the parties ought to ensure expeditious disposal of the appeal within the timelines provided hereunder.
13. Accordingly, the application dated 19th February 2025 is hereby allowed as follows:
 - i. The stay of proceedings in Voi CMCELC No. E002 of 2025 is hereby granted pending the hearing and determination of the appeal and shall only subsist for 60 days from today upon which the Appeal should have been heard and determined.
 - ii. The Applicants to file and serve the record of appeal within 14 days from the date hereof.
 - iii. Mention on 18th March, 2025 to confirm compliance and for further directions as to disposal of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 26TH DAY OF FEBRUARY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mwinzi for the Applicants.

Mr. Mwzighe for the Respondent.

Court Assistants: Mary Ngoira and Noah Chao.

