



**Kebengwa v County Government of Vihiga & another (Environment and Land Appeal E006 of 2024) [2024] KEELC 4952 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4952 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT AND LAND APPEAL E006 OF 2024**

**E ASATI, J  
JUNE 13, 2024**

**BETWEEN**

**ALFRED MALENGE KEBENGWA ..... APPELLANT**

**AND**

**COUNTY GOVERNMENT OF VIHIGA ..... 1<sup>ST</sup> RESPONDENT**

**GANGO ENTERPRISES COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before court for determination is the Notice of Motion dated 2<sup>nd</sup> April, 2023 brought by the appellant pursuant to the provisions of Article 25(c) of the Constitution of Kenya, Order 42 Rule 6(1) and Order 51 Rule 1 of the Civil Procedure Rules 2010 and Section 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya. The substantive order sought is prayer No. 3 which seeks for an order of stay of all proceedings in Vihiga MCL & E case No, 42 of 2019 pending the hearing and determination of the appeal herein.
2. The grounds of the appeal are that vide its ruling dated 14/3/2024 the trial court dismissed an application by the applicant herein seeking for leave to call an additional witness. That the applicant being dissatisfied with the ruling filed the appeal herein. That the appeal is arguable and that the application has been made without undue delay. That unless the orders sought are granted the case in the lower court will proceed without giving the applicant a chance to call the additional witness.
3. The application was supported by the contents of the Supporting Affidavit sworn by the applicant on 2<sup>nd</sup> April 2024.
4. The application was brought under Order 42 Rule 6 of the Civil Procedure Rules under which the application must be made timeously and demonstrate that the applicant will suffer substantial loss if the orders sought is denied. I note than the appeal before court is an interlocutory appeal against the ruling that denied the applicant a chance to have the case re-opened and additional evidence called for



the applicant. The applicant has deposed that if the orders sought are not granted the case in the lower court will proceed to defence hearing and the appeal will be rendered nugatory.

5. I find that it is in the interest of justice to allow the application. The same was unopposed.
6. The application is hereby allowed. No order as to costs. Applicant to fast track disposal of the appeal. Record of appeal be filed within 30 days hereof. Matter be mention for directions on the appeal on 18/8/2024.

Orders accordingly.

**RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 13<sup>TH</sup> JUNE, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Ajevi- Court Assistant.

Luvayi for the Appellant/Applicant.

Malanda h/b for Willie for the Respondent.

