



**Republic v Lelan Division Land Disputes Tribunal Comprising: Yarakwang & 2 others & another;  
Lopuonyang (Interested Party); Lopuonyang (Exparte Applicant) (Environment and Land  
Miscellaneous Application 1(B) of 2024) [2025] KEELC 667 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 667 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 1(B) OF 2024  
CK NZILI, J  
FEBRUARY 19, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LELAN DIVISION LAND DISPUTES TRIBUNAL COMPRISING : WILLIAM  
YARAKWANG, SAMUEL KUDOKI & JOSEPH KOLIMA- ..... 1<sup>ST</sup> RESPONDENT  
CHIEF MAGISTRATE KITALE LAW COURTS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GRACE NGORIANYANGI LOPUONYANG ..... INTERESTED PARTY**

**AND**

**JOHN KASIWOTOLOL LOPUONYANG ..... EXPARTE APPLICANT**

**RULING**

1. The court is asked by an application dated 30/11/2023 to:
  - (a) Stay proceedings and execution of the decree and all consequential orders in Kitale CMC Land Case No. 37 of 2007.
  - (b) Review, vary, or set aside the order made on 5/12/2016, dismissing the application or judicial review dated 19/10/2007.
  - (c) Reinstatement for hearing of the judicial review application on merits.
2. The reasons are contained on the face of the application and in the supporting affidavit of John Kasiwotolol Lopuonyang dated 30/11/2023. The applicant deposes that his then advocates on record



relocated to Nairobi without his knowledge and hence was unable to receive any correspondence from the said law firm. The applicant deposes that he only learned about the dismissal on 24/11/2023 when surveyors visited his land with the intention of subdividing it as per the vesting order issued *ex parte* and in his absence on 30/4/2021.

3. Again, the applicant deposes that he immediately appointed the current law firm to make inquiries, only to establish there was an application to enforce the decree dated 9/5/2007 as per annexures JKL 1,2,3 and 4, respectively. The applicant deposes that the affidavit of service attached as JKL'5' was misleading. Further, the applicant deposes that the dismissal of the subject matter was made without any fault on his part but on the fault of his then advocates on record, who relocated to an unknown location without his knowledge.
4. The applicant deposes that he was keen to prosecute his notice of motion to its logical conclusion. Additionally, the applicant deposes that the delay occasioned was not intentional, since he learned of the dismissal late and that it was in the interest of justice to allow the application.
5. Whereas the respondents were served with the notice of motion, attended court severally and sought for time to file a response, none was filed.
6. The purpose of a stay of execution is to preserve the subject matter in dispute so that the rights of the appellant, who is exercising an undoubted right of appeal, be safeguarded and if the appeal is successful, is not rendered nugatory. See *RWW -vs- EKW* [2019] eKLR. A party seeking for stay must file the application without inordinate delay, demonstrate substantial loss, and offer security for the realization of the decree should the appeal not succeed.
7. Substantial loss is what is to be prevented from happening. It has to be demonstrated through tangible and cogent evidence. See *Kenya Shell Ltd -vs- Karuga Kibiru* [1982-88] 1KLR 1081. It is not enough to plead that there is an impending execution. See *Butt -vs- Rent Restriction Tribunal* [1982] KLR 417 and *James Wangalwa & Others -vs- Agnes Naliaka Cheseto* [2012] eKLR.
8. Regarding stay of proceedings, Order 42 Rule 6 of the Civil Procedure Rules provides that an applicant must show that he has an arguable appeal, file an application expeditiously and show sufficient cause that it is in the interest of justice to grant the orders sought.
9. In *RE Global Tours & Travel Ltd NRB Winding Up Cause No. 43 of 2000*, the court observed that stay of proceedings is a judicial discretion exercised in the interest of justice considering the need for expeditious disposal of a case, the *prima facie* merits of the justified appeal, scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.
10. Further, in *Housing Finance Company of Kenya -vs- Sharok Kher Mohammed Ali Hirj & Another* [2015] eKLR, the court observed that sufficient cause to the satisfaction of the court must be shown why it is in the interest of justice to grant the orders of stay of proceedings. Stay of proceedings is, therefore, an earnest, grave, and fundamental interruption of a party's right to conduct his litigation. The general rule is that a stay should not be imposed unless the proceedings, beyond a reasonable doubt, ought not to be allowed. See *William Odhiambo Ramogi & Others -vs- The Hon. Attorney General & Others* [2019] eKLR. The court should essentially weigh the pros and cons of granting or not granting the stay, the sole question being whether it is in the interest of justice to grant the stay and on what terms.
11. Coming to setting aside or review of a dismissal order, the considerations were set out in *Shah -vs- Mbogo* 1968 EA 93, in *Njue Njagi -vs- Ephantus Njiru & Another* [2016] eKLR, *D. Chandulal K. Vora & Co. Ltd -vs- Kenya Revenue Authority* [2017] eKLR, and *Ivita -sv- Kyumbu* [1984] KRL 441. They include:



- (1) Whether the delay is prolonged or inexcusable.
  - (2) If justice can still be done to the parties despite the delay.
  - (3) Excuse for the delay.
12. In Philip K. Chemwolo & Another -vs.- Augustine Kubede [1982-88] KAR 1036 and Belinda Murai & Another -vs.- Amos Wainaina [1978] LLR 2782, the court held that in considering reinstatement, the court must be cognizant of a mistake of counsel, that should not be visited upon a litigant. The court held that doors of justice should not be closed because a mistake has been made by a lawyer of experience, who ought to know better, since courts exist for the supreme purpose of deciding the rights of the parties and not for the purposes of imposing discipline.
  13. In Essanji & Another -vs.- Solanki [1968] EA 218, the court observed that the administration of justice should normally require that disputes be investigated and decided on merits and that the error and lapses should not necessarily debar a litigant from the pursuit of his rights.
  14. Applying the foregoing case law, the matter was dismissed for non-prosecution on 5/12/2016, after a notice to show cause was issued by the court. Between 2016 and 2023, when this application was filed, the delay of over 7 years has not been explained. The applicant has not told the court when his then advocates on record relocated or he lost their contacts. He has not stated when he last made contact with them to know the status of his case. The applicant has not indicated what efforts he made to look for them, including visiting the court to establish the status of his case.
  15. A case belongs to a party. See Savings & Loan Ltd -vs.- Susan Wanjiru Muritu Milimani HCCC No. 397 of 2002. A party must therefore pursue their case. A court has a duty, where a case is not prosecuted, to dismiss it for want of prosecution. The delay herein is inordinate, unreasonable, inexcusable, and likely to cause serious prejudice to the respondents. See Ivita -vs- Kyumbu [1984] KLR 441.
  16. The applicant has not shouldered any blame but only wants the court to find fault on his former lawyers on record. A party cannot simply hide behind alleged mistakes of counsel, especially when the party went to slumber and forgot about the case. He must be vigilant to safeguard his rights. The applicant has not told the court why the court should stay the proceedings. The merits of the notice of motion have not been addressed. Sufficient cause to stay the proceedings has not been shown. Substantial loss has not been demonstrated.
  17. The upshot is that I find that it is not in the interest of justice to either stay the proceedings or the decree or altogether, set aside the dismissal order dated 5/12/2016. The application is dismissed with no order as to costs. File closed.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 19<sup>TH</sup> DAY OF FEBRUARY 2025.**

In the presence of :

Court Assistant - Chemutai

No appearance.

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

