



REPUBLIC OF KENYA



Kaiganaine v Wanderi & 2 others (Sued as the Administrators of the Estate of Walter Maitai Mathenge) (Environment & Land Case E022 of 2021) [2024] KEELC 13975 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13975 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E022 OF 2021
JO OLOLA, J
DECEMBER 20, 2024**

BETWEEN

JOHN GACHANGA KAIGANAINE PLAINTIFF

AND

MATHENGE WANDERI 1ST DEFENDANT

CHARLES NJERU MAITAI 2ND DEFENDANT

MUCHANGI MAITAI MATHENGE 3RD DEFENDANT

**SUED AS THE ADMINISTRATORS OF THE ESTATE OF WALTER MAITAI
MATHENGE**

RULING

1. By the Notice of Motion dated 5th March 2024, Mathenge Wanderi (the 1st Defendant) prays for Orders as follows:
 1. Spent.
 2. That there be a stay of further proceedings of the subject matter pending the hearing and final determination of an Intended Appeal against the Ruling delivered on 15th February 2024;
 3. Spent; and
 4. That the costs of this application do abide the outcome of the pending Appeal.
2. The application which is supported by two Affidavits sworn by the 1st Defendant is premised on the grounds that:



- a). Vide a Ruling delivered on 15th February 2022, the court dismissed an application dated 4th August 2023 thereby technically barring the 1st Defendant from defending himself in the suit;
 - b). Aggrieved by the said decision, the 1st Defendant has filed and served a Notice of Appeal; and
 - c). To ensure the Intended Appeal is not rendered nugatory, it is just that the proceedings be stayed.
3. John Gachanga Kaiganaine (the Plaintiff) is opposed to the application. In his Replying Affidavit sworn on 26th April 2024, the Plaintiff avers that the 1st Defendant has a duty to prove before this Honourable Court that he has an arguable appeal. The Plaintiff further avers that the 1st Defendant has not presented before the court his Draft Memorandum of Appeal and that the application as filed does not in any way satisfy the conditions precedent for stay of proceedings.
 4. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the submissions and the authorities placed before me by the Learned Advocates representing the parties herein.
 5. By his application before the court, the 1st Defendant urges the court to declare a stay of proceedings in this matter pending the hearing of an appeal he intends to file in the Court of Appeal.
 6. As was stated in Kenya Wildlife Service –vs- James Mutembei [2019] eKLR:

“Stay of proceedings 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 the right of access to justice, right to be heard without delay and overall, right to a fair trial. Therefore, the test for stay of proceedings is high and stringent.”
 7. Considering a similar, matter earlier on in Global Tours & Travels No. 43 of 2000, Ringera J (as he then was) stated 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 is it an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”
 8. I am persuaded by the above authorities which lay down the clear principles that stay of proceedings is a grave matter to be entertained only in the most discerning of cases as it impacts the right to a fair and expeditious trial.
 9. In the matte before me, the 1st Defendant urges the court to stay any further proceedings herein pending an appeal he intends to file in the Court of Appeal. It is the 1st Defendant’s case that following the ruling delivered by this court on 15th February 2024, he had technically been barred from defending himself in the suit and that in the circumstances, it would be fair and just to stay any proceedings herein to await the Appeal he intends to file in regard to the said Ruling.



10. That Ruling arose from an application dated 4th August 2023 wherein the 1st Defendant had sought to have his Statement of Defence and Witness Statements filed after the Plaintiff had testified and closed his case deemed as duly filed and served in time. In addition, the 1st Defendant had by the said application sought to have the Plaintiff's witnesses who had already testified recalled for purposes of cross-examination.
11. From the material placed before the court, I was unable to find any reason why this court should exercise its discretion in favour of the 1st Defendant. A perusal of the record herein reveals that the 1st Defendant has since 29th November 2021 when the proceedings herein commenced, exhibited extreme indolence. The court had previously granted him extension of time to enable him file his pleadings but he did not.
12. There was no proper reason given as to why those pleadings were not filed before the matter was set down for trial nor were there any proper reason given why the 1st Defendant and his counsel or record were not available in court on the date set for trial to cross- examine the Plaintiff and his witnesses.
13. Accordingly, I am not persuaded that there is any merit in the Motion dated 5th March 2024. The same is dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20TH DAY OF DECEMBER, 2024.

In the presence of:

Mr. Gichigo for the Plaintiff.

Ms. Kimani holding brief for Njenga for the 1st Defendant.

No appearance for the 2nd Defendant.

Court Assistant: Kendi.

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J. O. OLOLA

JUDGE

