



**Ndegwa v Mwangi (Environment & Land Case E015 of 2023)
[2024] KEELC 13624 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13624 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E015 OF 2023
MAO ODENY, J
DECEMBER 5, 2024**

BETWEEN

JENNIFER WANJIKU NDEGWA PLAINTIFF

AND

PETER MUCHIRI MWANGI DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 20th May, 2024 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That there be stay of proceedings and/or further hearings in this matter pending the hearing and determination of the Appeal lodged by the Court of Appeal. (sic)
 - d. That the costs of this Application be provided for.
2. The application was supported by the affidavit sworn on 20th May 2024 by Peter Muchiri Mwangi, the applicant who deponed that he is aggrieved by the ruling of this court delivered on 26th October 2023 which dismissed his application dated 19th May, 2023. He further deponed that he has filed an appeal against the same in the Court of Appeal under Nakuru Civil Appeal No. E194 of 2023 seeking review/ setting aside of this court's ruling and that if the proceedings before this Honourable Court are not stayed until his appeal is determined, it will be rendered nugatory.
3. The Plaintiff's/Respondent's counsel, Lawrence Ngugi Mwangi, filed a Replying Affidavit dated 28th May, 2024 and deponed that the application is devoid of any merit and the Defendant/Applicant has not specifically shown what loss or inconvenience he will suffer if the hearing of the main matter proceeds.



4. In a further affidavit dated 15th October, 2024 the defendant deponed that he is still the registered owner of the suit parcel of land and has never sold or disposed of the suit land and that the Plaintiff/ Respondent is not in occupation, possession or in use of the suit parcel.

Defendant /applicant's Submissions

5. The Defendant/Applicant filed submissions dated 15th October, 2024 and identified the issues for determination as:
- a. Whether there is an Appeal pending in a higher Court?
 - b. Whether this Honourable Court has powers to grant the orders sought in the place of the higher Court?
 - c. Whether the Appeal raises substantial questions to be determined or is otherwise arguable?
 - d. Whether the Appeal would be rendered nugatory if the stay of proceedings is not granted?
 - e. Whether there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal?
 - f. Whether the application for stay was filed expeditiously and without delay?
6. On the first issue, the applicant submitted in the affirmative, relied on Section 3A of the *Civil Procedure Act*, and submitted that the court has powers to grant the orders sought. It was the Applicant's submission that he has met the conditions for stay of proceedings and relied on the cases of Mbarak Said Ali & another vs Sultan Palace Development [2021] eKLR and Kenya Power & Lighting Company Limited vs Esther Wanjiru Wokabi [2014] eKLR.
7. On the fourth issue, the applicant submitted that if this application is not allowed, he might not be able to recover the suit land, which is in imminent danger of being sold and/or disposed of by the Plaintiff/Respondent herein to other third parties. The Applicant/Defendant submitted that allowing the application will ensure the issues raised in the Appeal are determined to a common conclusion thus preventing multiple proceedings.
8. On the fifth issue, the applicant submitted that the applicant has demonstrated in his appeal that he is the duly registered owner of the suit land and the Respondent herein has no legal rights over the suit land and relied on the cases of Turbo Highway Eldoret Ltd v Muniu (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) and Niazsons (K) Ltd vs China Road & Bridge Corporation (Kenya) [2001] eKLR.
9. On the sixth issue, the applicant relied on Order 42 Rule 6 (2) of the Civil Procedure Rules and submitted that the impugned ruling was delivered on 26th October, 2023 and the Applicant's appeal to the Court of Appeal was done vide Memorandum of Appeal dated 20th December, 2023. The applicant submitted that the instant application was filed on 21st May, 2024 after obtaining the full copy of the typed proceedings and he is not guilty of delay.

Plaintiff's/respondent's Submissions

10. Counsel for the Respondent filed submissions dated 24th October, 2024 and submitted that the applicant is indolent and is guilty of laches and should be denied the stay orders. Further that the applicant approached the Court of Appeal under provisions of Section 5 (2) (b) of the Court of Appeal rules, and that the correct forum to seek stay orders should have been the Court of Appeal and not this court.



11. Counsel submitted that the court is functus officio and the applicant will suffer no prejudice or harm if the application is not allowed and relied on the case of Raila Odinga & 2 others vs Independent Electoral and Boundaries Commission & 3 others [2013]. Counsel urged the court to dismiss the application and allow the matter to proceed for hearing.

Analysis And Determination

12. The issue for determination is whether the Applicant should be granted stay of proceedings pending the hearing and determination of the Appeal.
13. The Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, describes stay of proceedings as:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue...This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

14. Similarly in the case of William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others [2019] eKLR, a 5-judge Bench of the High Court, laid out the principles for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court and looked at the following cases Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR; Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000); David Morton Silverstein v Atsango Chesoni [2002] eKLR as follows:
 - a. First, there must be an appeal pending before the higher Court
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. .Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. .Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.



15. The Applicant has filed an appeal in the Court of Appeal and has not explained why he did not seek such orders in the court handling the Appeal. This court will not be able to give conditions for the expeditious conclusion or fast tracking of the Appeal. The court cannot supervise or give orders to compel a higher court to do certain acts.
16. It should be noted that stay of proceedings is a radical remedy which is only granted in very exceptional circumstances as was held by Ringera J (as he then was) in the Global Tours case(supra). The Applicant has not demonstrated any exceptional circumstances why the court should exercise its discretion in his favour.
17. I find that the application lacks merit and is therefore dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 5TH DAY OF DECEMBER 2024.

M. A. ODENY

JUDGE

