



Gikonyo & another v Kiambu Dandora Farmers Co Ltd & 4 others (Environment & Land Miscellaneous Case E092 of 2020) [2023] KEELC 470 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELC 470 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E092 OF 2020
EK WABWOTO, J
JANUARY 31, 2023**

BETWEEN

JOSEPH CHEGE GIKONYO 1ST PLAINTIFF

GICHE LIMITED 2ND PLAINTIFF

AND

KIAMBU DANDORA FARMERS CO LTD 1ST DEFENDANT

**THE CABINET SECRETARY, MINISTRY OF INTERIOR AND CO-
ORDINATION OF NATIONAL GOVERNMENT 2ND DEFENDANT**

THE INSPECTOR GENERAL OF POLICE 3RD DEFENDANT

**DEPUTY COUNTY COMMISSIONER, EMBAKASI SUB-COUNTY 4TH
DEFENDANT**

HON. ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. This ruling is in respect to the plaintiff's notion of motion application dated September 22, 2022 and accompanied by a supporting affidavit sworn by Joseph Gikonyo Chege, where the plaintiffs' sought the following orders:
 - a. ...Spent
 - b. That the honourable court be pleased to grant an order of stay of proceedings in this matter pending the hearing of this application.
 - c. That the honourable court be pleased to grant an order of stay of proceedings in this matter pending the hearing of the intended appeal.



- d. That the honourable court be pleased to grant to the plaintiffs/applicants to appeal against the ruling and order of the honourable court made on September 8, 2022.
 - e. That the costs of this application be provided for.
2. The application was based on the following grounds:
- i. That the ruling and order of this court was delivered on email and the plaintiffs did not have an opportunity to seek leave to appeal orally after the delivery of the ruling.
 - ii. That the plaintiffs have an arguable appeal against the said ruling.
 - iii. That if the leave sought to file the appeal and thereafter the intended appeal is filed and is successful, the further documents adduced by the plaintiffs will impact upon the result of the verdict of the honourable court and hence further hearing of this matter should be stayed.
 - iv. That the suit property in dispute is a primary place of business of the plaintiffs hence they will suffer substantial loss, prejudice and great loss if the suit is heard prior to the hearing and determination of this application and the intended appeal.
 - v. That the defendants will not be prejudiced in any way if the application herein is allowed.
 - vi. That the plaintiffs have filed this application swiftly and keen to have the intended appeal heard and determined without delay.
 - vii. That it is in the interest of justice that the aforesaid orders be granted as prayed.
3. The matter came up for further defence hearing on October 12, 2022 where the court directed for the application to be heard first. Parties were granted leave of 14 days each to file and serve their respective submissions.
4. Relying on the cases of *Stephen Omondi Juma v Sprocer Awour Rabote [2022]* and *Ezekiel Mule Musembi v H Young & Company (EA) Limited [2019]*, the plaintiffs submitted that they had adhered to the provisions of order 43, rule 4 and it was for the court to grant their right to a fair hearing that is protected in the *Constitution*.
5. Having considered the written submissions and supporting documents, it is clear that the issue for determination before this court is whether the application dated September 22, 2022 is merited.
6. On the issue of stay of proceedings, stay of proceedings is a serious judicial action which greatly interferes with the right of a litigant to conduct his litigation. In *Halsbury's Law of England, 4th Edition Vol 37 page 330 and 332*, it was stated that:

“...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.” [Emphasis Mine]

7. This court must factor in that stay of proceedings is also a discretion of the court. The use of discretion is to ensure proper use of judicial time and resources to dispense justice for the parties and guard against multiplicity of applications which are meant to delay the pursuit of justice.
8. The provisions of article 159(2)(a)(b)(c) and (d) of the Constitution of Kenya as read with sections 1A and 1B of the Civil Procedure Act, cap 21 enjoin this court to foster and facilitate the overriding objective of the act to render justice to parties in all civil proceedings in an expeditious manner.
9. In this instance, this case has progressed and is currently at the defence hearing, which prior to this application had been scheduled for October 12, 2022. Staying of proceedings herein would further delay a process that has nearly run its course. Furthermore, I take note that the additional evidence sought to be adduced has neither been described in weight or content. For this reason, I find that the plaintiffs have not made a compelling reason to warrant the court to stay its proceedings.
10. On the issue of granting leave to appeal, the plaintiffs filed the application on September 22, 2022 which was in compliance with the requirements under order 43, rule 1(3) of the Civil Procedure Rules that sets out:

“An application for leave to appeal under section 75 of the act shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order”

11. Order 43, rule 2 outlines the discretion of this court to grant leave for situations outside the purview of order 43, rule 1 and section 75 of the Civil Procedure Act as follows:

“An appeal shall lie with the leave of the court from any other order made under these rules.

12. This court is bound to ensure that parties undergo due process at every stage of the litigation process. In upholding article 50(1) of the Constitution, I find that the prayer for leave to appeal is rightly placed before the court and the same is therefore allowed.
13. In conclusion, the court hereby finds that the application dated September 22, 2022 is partially merited and the same is allowed under the following terms:
 - i. The plaintiff is hereby granted leave to file an appeal against the ruling delivered on September 8, 2022.
 - ii. Each party to bear its own costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31st DAY OF JANUARY 2023.

E K WABWOTO

JUDGE

In the presence of: -

Mr Nderitu for the plaintiffs.

Mr Murunga for the 1st defendant.

N/A for the 2nd defendant.



N/A for 3rd defendant.

N/A for the 4th defendant.

N/A for the 5th defendant.

Court Assistants; Caroline Nafuna and Philomena Mwangi.

E K WABWOTO

JUDGE

