



REPUBLIC OF KENYA



KENYA LAW
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**Maganga v Ongwayu (Civil Appeal E011 of 2025)
[2025] KEHC 2631 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E011 OF 2025
AN ONGERI, J
FEBRUARY 24, 2025**

BETWEEN

JAVAN MWANGALA MAGANGA APPLICANT

AND

JOSEPH SHAKO ONGWAYU RESPONDENT

RULING

1. The application coming for consideration in this Ruling is the one dated 5th February 2025 seeking the following orders:-
 - i. That this Honorable Court be pleased to certify this matter as urgent and service be dispensed forthwith in the first instance.
 - ii. That this Honorable Court be pleased to issue an order staying the proceedings in Voi Small Claims Court No. E001 of 2024 pending hearing and determination of this application.
 - iii. That this Honorable Court be pleased to issue an order staying the proceedings in Voi Small Claims Court No. E001 of 2024 pending hearing and determination of this Appeal.
 - iv. That this Honorable Court be pleased to issue an order staying the ruling of the trial court delivered on 15.1.2025 together with all its consequential orders made therein pending hearing and determination of the Appeal.
 - v. Costs of this application be provided for.
2. The application is based on the following grounds:-
 - i. That the trial court on 15.1.2025 delivered a ruling by allowing the Claimant to amend his pleadings and add another party to the claim.



- ii. That the orders that the trial Magistrate gave was out of order as the best stay was to strike out the claim.
 - iii. That the Claimant had initially voluntarily decided to amend his claim and removed the same party that the court gave an order to be added.
 - iv. That the Respondent has chosen to ignore the documents supplied to him by the Appellant and decided to proceed with the matter anyhow.
 - v. That the court acted outside its mandate and joined parties to the suit instead of playing a role of a referee.
 - vi. That the proceedings at the trial court need to be stayed to avoid rendering this appeal nugatory.
 - vii. That the Respondent will suffer no harm if this application is allowed.
 - viii. That it will be the interest of justice and fairness this application be allowed.
3. The application is supported by the affidavit of Javan Mwangala Maganga in which he deponed as follows:-
- i. That I am the applicant herein in this matter and well versed with the same therefore competent to swear this affidavit.
 - ii. That I am aware that the trial court on the 15.1.2025 delivered its ruling by maintaining me in the claim.
 - iii. That the said ruling I have been anxiously waiting for it only to be supplied to my advocates on the 25th January 2025.
 - iv. That the orders made in that ruling were not proper as they were meant to still keep me in the claim yet there is no cause of action that can be maintained against me.
 - v. That am aware that the respondent was informed that I no longer own the motor vehicle which was subject of the proceedings but nevertheless proceeded and ignored the same.
 - vi. That my participation in the suit is not necessary as I am not able to respond to any issue raised since I sold the motor vehicle long time ago.
 - vii. That it will be proper and just this honorable court do issue an order staying the ruling that the trial court made on the 15.1.2025 pending the hearing and determination of the application and appeal.
 - viii. That it will also be wise that this Honorable Court do proceed and stay the proceedings in the trial court so that the Appeal cannot be rendered nugatory.
 - ix. That there will be no prejudice that will be occasioned upon the respondent if the orders sought in this application are granted.
4. The Respondent filed Replying Affidavit as follows:-
- i. That the Application has not met the legal threshold for the grant of the Orders sought therein Under Order 42 Rule 6 and 7 of the Civil Procedure Rule 2010
 - ii. That the Applicant has not presented sufficient evidence as well as factual grounds for the grant of the Orders sought.



- iii. That the Application is an abuse of the court process, as the Applicant is trying to seek fresh orders from this Honourable Court to strike the Claim in its Appeal while in its application dated the 11th November 2024, he did not seek striking out of die Claim but rather the Applicant.
 - iv. That in any case, the Respondent in his Replying Affidavit, sought leave to join Shake Distributors Limited the purported actual (Beneficial) owners of the accident motor vehicle.
 - v. That even if the Respondent failed to seek joinder of the third party above, the trial Court has unfettered discretion under section 17 of the *Small Claims Court Act*
 - vi. That the Applicant has not provided for security of costs following the orders of the Trial Court to pay Kshs. 15,000/- as thrown away costs following the Courts order setting aside a regular judgement in favour of the Respondent for it to bike the Applicant's Defence which was not filed not even a draft and later on strike him out if it finds from the Defence that the Appellant is an unnecessary party.
 - vii. That the Application dated the 5th of February 2025 is therefore bad in law, an abuse of the court process and ought to be dismissed with costs to the Respondent.
5. The parties submitted orally in court. The Applicant submitted that the Small Claims Court delivered a ruling that allowed the Claimant to amend his pleadings and add another party to the claim.
 6. That the said order is opposed because the Claimant had initially voluntarily removed the same party.
 7. Further that proceedings before the Small Claims Court should be stayed pending an appeal to the High Court against the said order.
 8. The Respondent opposed the application and argued that the Applicant has failed to comply with Order 42 Rule 6.
 9. Further, that this being an appeal from the Small Claims Court the High Court can only entertain matters of law and not facts.
 10. The Respondent also submitted that the Applicant failed to attach a draft defence in the Small Claims Court.
 11. Further, that the Applicant will not be prejudiced because he has been allowed to file a defence.
 12. In brief rejoinder, the Applicant stated that Order 42 Rule 6 is not applicable since the Applicant is not seeking setting aside of the judgment but strike out of the application.
 13. That the proceedings ought to be stayed pending appeal.
 14. The sole issue for determination is whether the proceedings at the Small Claims Court proceedings should be stayed.
 15. In the case of *Global Tours & Travels Limited*; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated that:
 - 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 it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

16. The issue was also discussed in the *Kenya Wildlife Service VS James Mutembei* (2019) eKLR Gikonyo J quoted *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, 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.”

17. I find that grant of stay of proceedings is not in the interest of justice. I find that the Small Claims Court proceedings are time bound and granting stay of proceedings will take this case beyond the period stipulated by the law.
18. I also find that the court has a discretion to allow joinder of parties to a suit suo moto at any stage of the proceedings.
19. Order 1 rule 10(2) of the said *Rules* provides that:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

20. In the case of *Kingori vs. Chege & 3 Others* [2002] 2 KLR 243 the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:

- “1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.”

21. I find that the joinder of the applicant is necessary in the circumstances of this case.
22. I dismiss the application dated 5th February 2025 and I direct that the case proceeds before the Small Claims Court as scheduled.
23. The costs of this application to abide the cause.



**DATED, SIGNED AND DELIVERED THIS 24TH DAY OF FEBRUARY 2025 VIRTUALLY VIA
MT AT VOL.**

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina

Mr. Mwazighe for the Appellant

Mr. Chebii for the Respondent

