



REPUBLIC OF KENYA



**Gimose & another v Njenga (Civil Appeal E338 of 2024)
[2025] KEHC 2994 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E338 OF 2024
FN MUCHEMI, J
MARCH 13, 2025**

BETWEEN

CHARLES GUMINI GIMOSE 1ST APPELLANT

JOSEPHINE KINYANJUI 2ND APPELLANT

AND

DANIEL WAMWEYA NJENGA RESPONDENT

RULING

1. The application dated 3rd December 2024 seeks for orders of stay of proceedings in Gatundu CMCC No. E091 of 2023 pending the hearing and determination of this appeal against the ruling delivered on 4th November 2024.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 23rd December 2024.

Appellants'/Applicants' Case

3. The applicants state that the respondent filed an application dated 24th September 2024 seeking to adduce new evidence. This was after parties had closed their respective cases and judgment date already reserved. The court delivered its ruling on 4th November 2024 allowing the respondent to adduce new evidence even after the parties had already closed their respective cases and a judgment date reserved.
4. The applicants state that pursuant to the ruling dated 4/11/2024, the learned magistrate ordered the reopening of the case to enable the respondent introduce new evidence in relation to the matter after the hearing had already been concluded and submissions filed by both parties, where after the matter was fixed for re-hearing on 16th December 2024.



5. The applicants argue that they will be greatly prejudiced by the court ruling subject of the instant appeal unless this court intervenes and grants the prayers sought. the applicants further argue that they shall suffer irreparable harm and damage unless the orders sought are granted.
6. The applicants state that no perceivable or actual prejudice shall be suffered by the respondent and it is in the interests of justice that the orders sought are granted.
7. The applicants aver that the application has been presented without unreasonable delay. Further, the applicants state that they have an arguable appeal that raises triable issues.

The Respondent's Case

8. The respondent states that the applicant does not intend to have the matter be heard on merit as they anchor their whole application on a technicality that was already heard and determined on merit with the discretion of the court.
9. The respondent argues that the intended appeal is grounded on flimsy grounds calculated to prolong litigation without any justifiable grounds as the matter of reopening a case to allow additional evidence before judgment is a matter of discretion of the court that considers material before it by both parties provided the judicial officer in conduct of the matter doesn't base its finding on extraneous circumstances.
10. The respondent states that the applicant's main contention was that he produces the correct copy of records that would clearly implicate the 2nd applicant as the beneficial owner of the motor vehicle that was involved in the subject road traffic accident. The respondent further argues that there was only a slight inconsistency of the vehicle registration number that is the vehicle that was involved in the accident. The respondent further states that the pleadings and proceedings of the court below supports his averment.
11. The respondent avers that there was already positive identification of the 2nd applicant the police abstract and occurrence book which already show that the 2nd applicant is the owner of the school bus involved in the material accident.
12. The respondent states that the copy of records he erroneously presented as evidence from the onset was occasioned by a mis-writing of the last letter of the relevant number plate in his requesting letter to the NTSA. The respondent further states that he wrote KDC 140K instead of KDC 140U in the letter requesting the particulars to NTSA.
13. The respondent avers that there cannot exist another copy of records material to the issue at hand rather than the one intended to be produced making it the reason why the applicants want the same locked out completely. The respondent states that the 2nd applicant is the only applicant that has participated in the entire proceedings at the lower court from inception to date. The 2nd applicant had already been positively identified by name as per the police OB dated 14th September 2022.

The Applicants' Submissions

14. The applicants rely on the case of Kenya Wildlife Service vs James Mutembei [2019] eKLR; Global Tours & Travels Limited Nairobi HC Winding Up Cause No. 43 of 2000 and David Morton Silverstein vs Atsango Chesoni [2002] eKLR and submits that stay of proceedings is a grave matter to be entertained only in the most deserving of cases as it impacts the right to expeditious trial. The applicants submit that from the respondent's pleadings in the trial court, there was no indication that he intended to file any additional documents. The respondent's list and bundle of documents dated



- 17/4/2023 already contained another motor vehicle search and police abstract in relation to the motor vehicle he blamed in his pleadings that is KDK 140K. The applicants argue that at the time the matter was confirmed ready for hearing at the pretrial conference, which the respondent participated in, it is clear that the applicant was content as to the evidence he intended to introduce.
15. The applicants submit that after the court allowed the respondent to introduce new evidence vide its ruling delivered on 4/11/2024, after the applicants had filed a memorandum of appeal dated 3/12/2024 on grounds that the learned magistrate erred in law and in fact by fixing the case for re-hearing despite the case having been fully heard and a judgment date reserved.
 16. The applicants rely on the cases of Stanley Kinyanjui vs Tony Ketter & 5 Others (2013) eKLR and University of Nairobi vs Ricatti Business of East Africa (2020) eKLR and submit that they have an arguable appeal that deserves to be heard and argued fully in court.
 17. The applicants submit that they stand to suffer great prejudice should the orders sought not be granted as the matter is slated for re-hearing on 16/4/2025 in the trial court. It is argued that if the orders for stay are not granted, the case in the court below is likely to proceed and the appeal which is premised on the admission of the new evidence will be rendered nugatory. The applicants submit that they will be deprived of their right to exhaust the appellate process available contrary to the dictates of justice.
 18. The applicants refer to the cases of Turbo Highway Eldoret Ltd vs Muniu (Civil Appeal E040 of 2021) [2022] eKLR and Port Florence Community Health Care vs Crown Health Care Limited [2022] eKLR and urges the court to serve the interests of justice that justice should be granted expeditiously and therefore denying a stay of proceedings only to later allow a stay of judgment is an unnecessary delay of justice. The applicants submit that there is sufficient cause to stay the lower court proceedings as they have established a prima facie arguable appeal and the same has been brought without delay.

The Respondent's Submissions.

19. The respondent relies on the cases of William Odhiambo Ramogi & 2 Others vs the Honourable Attorney General & 3 Others [2019] eKLR; Halsbury's Laws of England, 4th Edition, Vol 37 at p.330 and Global Tours & Travels Limited (Nairobi HC Winding up Cause No. 43 of 2000) and submit that the applicants have not satisfied the threshold for granting orders for stay of proceedings. The respondent submits that the applicants have only stated that they are opposed to the new evidence being a copy of records from NTSA capturing the true owner of the material motor vehicle. It is prudent to note that the sole defence witness in the matter is the driver of the material motor vehicle that was involved in the accident as captured in the police abstract and the occurrence book.
20. The respondent argues that in the prevailing circumstances, there is no arguable appeal on questions of fact or law to expect from the applicants because there is no demonstration as to why the intended evidence should not be produced while at the same time not providing any evidence to the contrary since institution of the matter so as to ascertain the correct number plate of the motor vehicle that was involved in the material road traffic accident.
21. The respondent relies on South African Authors, Gardiner and Lansdown (6th Ed. Vol. 1 p. 750) and submits that granting stay of proceedings pending an appeal over an interlocutory matter before a magistrate's court ought to be granted only in exceptional circumstances.

The Law

Whether the applicants have met the conditions for grant of stay of proceedings pending appeal.



22. It is trite law that whether or not to issue an order for stay of proceedings is a matter of the court's discretion exercised after due consideration of the merits of the case and the likely effect on the ends of justice. The exercise of that discretion should be premised on conscientious and judicious decision based on defined principles which were expounded by Ringera J in *Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000*:-

“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 justicethe sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, 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.”

23. Similarly the threshold for granting stay of proceedings has been illuminated in the passages in *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 proceedings 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 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.”

24. In that regard, for an order of stay of proceedings to issue the following points of consideration ought to be adhered to:-

- a. Whether the applicant has established that he has a prima facie arguable case;
- b. Whether the application was filed expeditiously; and
- c. Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

Whether the applicants have established that they have a prima facie arguable appeal

25. Cognizant of the fact that an arguable appeal needs only raise a single bona fide point worthy of consideration by the Judge who will hear the appeal and it need not be one that must necessarily succeed. *Cooperative Bank of Kenya Ltd vs Banking Insurance of Finance Union (Kenya) [2015] eKLR.*



26. I have keenly perused the memorandum of appeal and noted that the applicants' main contention is that the court below allowed the respondent to re-open his case and adduce new evidence yet the matter had been closed and a judgment date reserved. I have not had the liberty to peruse the ruling of the court below for the reason that the applicant did not annex the ruling to this application. The ruling would have been important for this court to peruse and interrogate the reasoning of the honourable magistrate. That notwithstanding, it is noted that the occurrence of the accident was not contested by the applicants' driver. He stated that he hit a pedestrian on the material day as he drove motor vehicle registration number KDC 140U which is the correct number. The respondent in his new evidence just came in to tender in evidence the copy of the records with the correct registration number which the court allowed before judgment was delivered though the date for judgment had been set for hearing on 16/04/2025 and in the interests of justice, the lower court will definitely allow him to cross-examine on the new evidence.

Whether the application was filed expeditiously

27. The ruling was delivered on 4th November 2024 and the applicants filed the instant application on 3rd December 2024. Thus the application was been filed expeditiously.

Whether the applicants have established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought

28. In an application to stay proceedings the court is required to exercise judicial discretion in the interest of justice. This has been demonstrated in the case of Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR the court observed that:-

“.....what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”

29. The applicants state that they will suffer substantial loss and irreparable damage if the proceedings in the proceedings before the lower court are not stayed for the case will be opened and re-heard on 16th April 2024 yet the matter has been closed and a date for judgment reserved. On perusal of the respondent's replying affidavit, it is clear that the trial court, upon allowing the re-opening of the respondent's case stated that the applicants would have a chance to cross examine the witness on the contents of the copy of records. Furthermore, the copy of records will ascertain who the true owner of the motor vehicle is considering that the applicants' witness admitted that an accident occurred on the material date.
30. The court below took care of the rights of fair hearing of the applicant. As such, the court is not convinced that it would be in the best interests of justice if the proceedings are stayed. If the orders sought are granted, the case in the lower court is likely to delay to the disadvantage of both parties. To allow the respondent ventilate his case fully is in accordance with Article 50 of *the Constitution* and in the interest of justice. At the conclusion of the case, both parties herein will have their rights of appeal against the entire judgment.
31. Consequently, the applicant in my considered has not shown sufficient cause to warrant stay of proceedings in Gatundu CMCC No. E091 of 2023.



Conclusion

32. It is thus my considered view that the application dated 3rd December 2024 lacks merit and is hereby dismissed with costs.
33. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE

