



**Ichung'wah v Omari (Civil Appeal E1146 of 2023)
[2025] KEHC 4752 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4752 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1146 OF 2023

TW CHERERE, J

MARCH 6, 2025

BETWEEN

HON. KIMANI ICHUNG'WAH APPLICANT

AND

DANSTAN OMARI RESPONDENT

RULING

Introduction

1. The Respondent filed Milimani MCCC NO. E1841 OF 2023 seeking against the Applicant orders among others, damages for defamation and an injunction to restrain the Applicant by himself, his agents, servants, or anyone acting on his behalf from writing, reducing, broadcasting, publishing, and/or republishing defamatory information on any medium and in any other manner whatsoever about the Respondent.
2. Along with the suit, Respondent filed an application for a temporary injunction seeking to restrain the Applicant from publishing defamatory statements about the Respondent pending the hearing and determination of the suit.
3. By a ruling dated 06th October, 2023, the court granted the temporary injunction restraining the Applicant from publishing defamatory information on any medium and in any other manner whatsoever about the Respondent pending the hearing and determination of the suit.
4. Aggrieved by the ruling, the Applicant filed this appeal to challenge the injunction and, together with it, filed the notice of motion dated 10th February 2025 seeking a stay of proceedings in Milimani MCCC NO. E1841 OF 2023 pending the hearing and determination of the appeal.



5. The application is supported by an affidavit sworn by the Applicant on 10th February 2025 by the applicant who mainly contends that the hearing in Milimani MCCC NO. E1841 OF 2023 will render the intended appeal nugatory and cause him irreparable loss.
6. The Respondent opposes the application, asserting that the Applicant has failed to demonstrate any exceptional circumstances warranting a stay. The Respondent further contends that the trial should continue as scheduled in the interest of expeditious disposal of cases.
7. In his submission, the Respondent reiterated that the Applicant has not shown the loss he may suffer if the hearing of Milimani MCCC NO. E1841 OF 2023 were to proceed as planned. He cited Richard Nchapi Leiyagu v IEBC & 2 others [2013] eKLR and Civil Appeal 124 of 2022 - MRM aka RLM *v SMRM (Civil Appeal 124 of 2022)* [2024] KEHC 446 (KLR) (25 January 2024) (Ruling) to support his arguments.

Analysis and determination

8. Having considered the application in light of the affidavits on record together with the Respondent's submissions, the Applicant having not filed any, the only issue for determination is whether the Applicant has met the legal threshold for granting an order for stay of proceedings.
9. The Court's power to grant a stay of proceedings is discretionary and must be exercised judiciously. In *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000, Ringera, J* (as he then was) stated:

“As I understand the law, whether or not to grant a stay of proceedings 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 so, on what terms. 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 succeed or not, but whether it is an arguable one), and the scarcity and optimum utilization of judicial time.”
10. The Court of Appeal in *Richard Nchapi Leiyagu v IEBC & 2 others* [2013] eKLR emphasized that:

“The right to a hearing has always been a well-protected right in our Constitution and is also the cornerstone of the rule of law.”
11. Further, in *Kenya Wildlife Service v James Mutembei* [2019] eKLR, the Court reiterated that:

“Stay of proceedings is a grave judicial action that interferes with the right of access to justice and should only be granted where the applicant demonstrates a strong case to warrant such an order.”
12. In *Civil Appeal 124 of 2022 - MRM aka RLM v SMRM (Civil Appeal 124 of 2022)* [2024] KEHC 446 (KLR) (25 January 2024) (Ruling), the court held that:

“Stay of proceedings is a grave matter to be entertained only in the most deserving cases as it impacts the right to an expeditious trial.”



13. The Applicant argues that proceeding with Milimani MCCC NO. E1841 of 2023 will render the appeal nugatory and he is likely to suffer loss.
14. The Respondent, however, contends that the Applicant has failed to demonstrate any exceptional circumstances to warrant the stay and that the hearing should proceed in line with the constitutional imperative of expeditious resolution of disputes.
15. This Court is guided by the principle that the right to a fair hearing is a fundamental right protected under Article 50 of Constitution of Kenya, 2010. A party seeking an order of stay of proceedings must show substantial prejudice that goes beyond the normal inconveniences of litigation.
16. In the present case, the Applicant has not demonstrated how the continuation of the suit will occasion him irreparable harm beyond the hassle of litigation. The appeal, if successful, can still be accommodated through appropriate remedies without necessarily halting the trial process.
17. In light of the foregoing analysis, I find that the Applicant has not met the threshold for the grant of an order for stay of proceedings. Accordingly, the notice of motion dated 10th February 2025 is dismissed with costs to the Respondent.
18. This matter be mentioned before the Deputy Registrar on 29th April 2025 to confirm filing of the Record of Appeal.

It is so ordered.

DELIVERED AT NAIROBI THIS 06th DAY OF March 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicant - Mr. Mutua for Miller & Co. Advocates

For Respondent - Mr. Mabeya for Danstan Omari & Associates Advocates

