



**Maingi v Makone (Civil Appeal E356 of 2024)  
[2025] KEHC 3509 (KLR) (Civ) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3509 (KLR)

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

**CIVIL**

**CIVIL APPEAL E356 OF 2024**

**JN MULWA, J**

**MARCH 21, 2025**

**BETWEEN**

**EVANS NUSU MAINGI ..... APPELLANT**

**AND**

**CHRISTINE NYARESO MAKONE ..... RESPONDENT**

**RULING**

1. The motion dated 24/04/2024 brought by the Appellant seeks orders of stay of proceedings in the trial court MCCCE13095 of 2021 which was delivered against the appellant on 6/04/2023 pending hearing and determination of the Appeal filed by a Memorandum of Appeal dated 8/03/2024.  
The Record of Appeal is yet to be filed.
2. The motion is predicated on Section 3, 3A and 63(e) of the *Civil Procedure Act* (CPA) and Order 42 Rule 2 (1) of the Civil Procedure Rules (CPR) and supported by the affidavit by the applicant sworn on 24/04/2024.
3. Herein the applicant claims to have been granted leave to file its Appeal and indeed filed a Memorandum of Appeal on 8/03/2024. Among the grounds of appeal raised therein is that the Respondents recovery suit was premature as the appeal in the Criminal Division of the High Court had not crystallized and therefore the order for stay of further proceedings.
4. In the opposition to the Motion, the respondent relies on her replying affidavit sworn on 1/07/2024 stating that upon the applicant having been found guilty of the offense of Burglary Contrary to Section 279(b) of the *Penal Code* in Makadara Criminal Case no. 3401 of 2018, she is at liberty to enforce the recovery of Kshs. 6,000,000/= ordered as compensation as a civil debt



5. Further the applicant deposes that she has paid the fine imposed of Kshs. 500,000/= and proceeded to file an appeal against the Criminal Court Judgment in Hccra No. E091 of 2021 which was dismissed as an abuse of court process by the High Court and therefore the respondent deposes that the application is frivolous and further abuse of court process.
6. None of the parties filed submissions.
7. The court has considered the parties pleadings. The applicant seeks to stay the recovery proceedings instituted by the Respondent in MCCC E13095 of 2021 to await hearing and determination of this Appeal.
8. The Record of Appeal as stated above has not been filed despite the proceedings in the trial court having been ready for collection (copies in the court file) since 26/04/2024 and the parties duly notified by the Deputy Registrar of the Court
9. The court further notes from the record that the Applicant has not preferred an Appeal to the Court of Appeal against dismissal of his Appeal from the Criminal Case by the High Court (Criminal Division) on 19/01/2023 (Hon. J. Mutende) as well as the rulings dated 6/04/2024 and 23/02/2024.
10. Stay of proceedings in the trial court pending appeal is a grave judicial action which interfere with the right of a litigant to conduct his litigation without unnecessary delay as held in the case of Kenya Wildlife Service v James Mutembei [2019]eKLR, and ought to be allowed in very exceptional circumstances.
11. In the case of Global Tours & Travel Limited – Nairobi Winding up Cause No. 43 of 2000 such an order is at the discretion of the court and the sole question is whether it is in the interest of justice to order stay of the proceedings. The court proceeded to state that:-
 

“..... 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..... whether it is an arguable one, the scarcity and optimum utilization of judicial time.....”
12. Upon consideration of the above learned decisions, it is evident that the intended appeal is not arguable and its chances of success is minimal.
13. The court therefore concludes that the applicant’s application dated 24/04/2024 lacks merit. It is dismissed with costs to the Respondent. The Respondent is at liberty to progress hearing of the recovery suit. .

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 21ST DAY OF MARCH 2025.**

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**JANET MULWA.**

**JUDGE**

