



**Mwangi v Space Capital Investment Ltd & another (Civil Appeal  
E260 of 2024) [2025] KEHC 2309 (KLR) (6 March 2025) (Directions)**

Neutral citation: [2025] KEHC 2309 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E260 OF 2024  
FN MUCHEMI, J  
MARCH 6, 2025**

**BETWEEN**

**PIUS NJAGI MWANGI ..... APPLICANT**

**AND**

**SPACE CAPITAL INVESTMENT LTD ..... 1<sup>ST</sup> RESPONDENT**

**JOHN NJAU MWAURA ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTIONS**

1. This appeal was filed on 4<sup>th</sup> October 2024 by the firm of KMK Law LLP together with an application dated 1<sup>st</sup> October, 2024 seeking orders for stay of execution pending hearing and determination of this appeal. The application was placed before Chepkwony J in Kiambu High Court on 4<sup>th</sup> October, 2024 who directed that the application be served on the Respondents; that parties do exchange submissions and that status quo be maintained.
2. On 27/11/2024 this matter was mentioned before this Court whereas the applicant's counsel Mr. Irungu applied to have him abandon the application for stay and proceed with the appeal. He said his client was facing financial challenges and may not afford to deposit security of judgment as required under Section 42(b) of the Civil Procedure Rules in applications for stay. The applicant filed the record of appeal on 4/10/2024.
3. The counsels for the Respondents Ms Nduta and Mr. Nkomejimana respectively opposed the application and urged the applicant to provide security so that the application for stay could be compromised.
4. The Court directed that parties do file submissions on the application for stay dated 01/20/2024 based on the directions of Chepkwony J on 4/10/2024.



5. The mention of 4/12/2024 was before Deputy Registry by which time the applicant and the 2<sup>nd</sup> Respondent had filed their submissions. The 2<sup>nd</sup> Respondent was given time to comply and to file a preliminary objection.
6. On 6/12/2024, the matter was mentioned again before a visiting Judge Hon. Njoroge J before whom the preliminary objection had been fixed for hearing during a Rapid Result Initiative (RRI) in this station. The matter was fixed for ruling on the preliminary objection on 30/01/2025 pending compliance on submissions by the applicant within 5 days.
7. On 10/12/2024, the applicant filed a fresh application whereas directions were given that the application be heard together with the preliminary objection and the application dated 5/12/2025.
8. During the next mention, on 16/02/2025, the applicant's counsel Mr. Irungu applied to have his application dated 5/12/2024 be withdrawn because he had obtained a certificate of delay. The Respondents opposed this application arguing that the preliminary objection was at an advanced stage and ought to be disposed off first.

9. Having given the brief facts on this matter, I hereby make some observations before the directions.
10. Firstly, it is evident that there is a preliminary objection which has been fully heard and the parties have filed submissions. The matter was before Judge Njoroge B a visiting Judge who gave a ruling date for 30/01/2025. The file was awaiting submissions of one party who had not complied with the directions given earlier.

According to the directions of the Judge, this file was to be forwarded to him at Milimani High Court so that he could prepare the ruling on the preliminary objection.

11. However, another application dated 05/12/2024 seeking for leave to file appeal out of time was filed by the applicant on 10/12/2024. Directions were given that the said application be heard together with earlier application and the preliminary objection because they were found to be related. The matter came for mention on 11/02/2025 when the applicant applied to withdraw the application dated 05/12/2025.
12. The question is whether it would be in the interest of justice to withdraw the application dated 5/12/2024. In my view, the case was pending ruling on the preliminary objection. If the applicant wishes to withdraw the application dated 05/12/2024, I see no reason why he should not be allowed to do so. After all, the application sought for extension of time to appeal. Further, none of the parties had filed any responses to the said application. The applicant has a right to withdraw his application anytime before a ruling is made.
13. As for filing the certificate of delay in regard to the first application dated 1<sup>st</sup> of October 2024, I decline to allow that because the preliminary objection is at an advanced stage and the withdrawal is likely to cause prejudice to the Respondents having fully complied with the directions including filing submissions.
14. The filing of the record of appeal was also not procedural for it came before the appeal was admitted and before the preliminary objection on the validity of the appeal was determined.
15. Having made the foregoing observations, I hereby make the following orders/directions: -
  - a. That the application dated 01/10/2024 is hereby dismissed for non-compliance with the directions of the Court on 4<sup>th</sup> October, 2024.
  - b. That the application dated 5<sup>th</sup> December, 2024 is hereby marked as withdrawn.



c. That the Record of Appeal filed irregularly is hereby struck out.

d. That the Preliminary Objection which has been fully heard shall be set for a ruling forthwith.

16. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 6TH DAY OF MARCH 2025.**

**F. MUCHEMI**

**JUDGE**

