



**MIO (A Minor Suing through Michael Isaac Ombuoro) v Vinayak
& 2 others; Odhiambo (Interested Party) (Civil Suit 138 of 2016)
[2025] KEHC 7625 (KLR) (Civ) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL SUIT 138 OF 2016
SN MUTUKU, J
MAY 26, 2025**

BETWEEN

**MIO (A MINOR SUING THROUGH MICHAEL ISAAC
OMBUORO) PLAINTIFF**

AND

DR SUNIL VINAYAK 1ST DEFENDANT

DR GEOFFREY MUIRURI KING'ANG'A 2ND DEFENDANT

SMILE AFRICA LIMITED 3RD DEFENDANT

AND

MILLICENT ODHIAMBO INTERESTED PARTY

RULING

1. This Ruling relates to the issues raised by the parties herein. The records of the court show that the by a Notice of Motion dated 2nd December 2020, the 1st Defendant and 3rd Defendant sought stay of proceedings in this suit pending hearing and determination of an application for review and/or appeal against the decision of Hon. Mr. Justice Mativo, as he then was, dated 22nd July 2020 in Judicial Review Misc. Application No. 29 of 2019.
2. This court (Hon. Lady Justice Meoli) granted stay to preserve the subject of the Appeal to the Court of Appeal. The stay granted was for 9 months from the date of that ruling on 19th January 2024. The effect of that order was that the proceedings in this case were stayed for the initial 9 months pending the hearing and determination of the appeal.



3. Upon expiry of the 9 months stay of proceedings period, the parties, on 22nd October 2024, extended the order for stay of proceedings further to 5th May 2025. The order further stated that in all subsequent mentions for purposes of the progress of the Appeals, counsel the 1st and 3rd defendants was required to file progress reports by way of affidavits and annexures demonstrating progress or efforts made to pursue the appeal now pending in the Court of Appeal.
4. The matter has been placed before me. On 22nd May 2025, Mr. Mungai for the 1st and 3rd defendants informed the court that the appeals are still pending at the Court of Appeal as the Court of Appeal is yet to list the said appeals for hearing. He asked this court to extend the order for stay of proceedings in this matter to await the hearing and determination of the appeal.
5. Mr. Ouma, representing the proposed Interested Party submitted that the minor is in bad condition and requires medical care; that the Appeal lodged by the 1st and 3rd defendants prevents this matter from proceeding. He sought a hearing date for the hearing of the application by the proposed Interested Party.
6. Mr. Mutua holding brief for Mochache for the Plaintiff agreed with Mr. Ouma and submitted that there was no stay of proceedings in the file given that the order for stay has lapsed. He asked the court to fix a hearing date for the application dated 24th August 2023 which application the Plaintiff was not opposed to.
7. Ms Njari for the 2nd defendant submitted that the 2nd defendant was not opposed to the extension of the order for stay of these proceedings. She submitted, further, that Mr. Ouma was not properly before the court and therefore had no audience before the court.
8. In a rejoinder, Mr. Mungai submitted that Mr. Ouma was a stranger to these proceedings and that his submissions ought to be expunged from the record. He submitted that stay of proceedings was granted and extended and that the 1st and 3rd defendants have a right to be heard as justice cuts both ways.
9. I have considered the issues raised in this matter. I am aware that the order for stay of proceedings lapsed and was not extended when the matter was placed before me for mention on the 5th May 2025. The 1st and 3rd defendants were required to give progress of the report in respect of the appeals in this matter. It is instructive that on that date, Mr. Mungai for the 1st and 3rd defendants and Ms Njari for the 2nd defendant were not in court when the matter was mentioned. I informed Mr. Ouma for the proposed Interested Party and Ms Kimanthi for the Plaintiff that I needed time to read the records of the court file and acquaint myself with the matter and fixed the matter for mention on 22nd May 2025.
10. Mr. Mungai and Ms Njari showed up on the virtual platform after I had given the above directions. I communicated to them the directions issued and both confirmed that they were available on 22nd May 2025.
11. I have also noted that Notice of Motion dated 24th August 2023, seeking to have the proposed Interested Party joined to these proceedings was placed before this court (Visram, J) on 26th August 2023 when it was placed for hearing before Hon. Lady Justice Meoli on 19th October 2023. On 19th October 2023, Mr. Ouma attended court for the proposed Interested Party. The court (Meoli, J) stood over the application until 14th December 2023. The record shows that the matter was not heard or mentioned on 14th December 2023. It was before the court on 19th January 2024 when ruling granting stay for 9 months was delivered. The court (Meoli, J) ordered that in view of the orders granted in that Ruling (granting stay for 9 months) the Application dated 24th August 2023 shall remain in abeyance for the period of stay.



12. The record shows that counsel for the 1st and 3rd defendants and for the 2nd defendant did not raise the issue that Mr. Ouma or any counsel representing the proposed Interested Party was not properly before the Court in all the occasions the matter was in court following the filing of the Notice of Motion dated 24th August 2023. Mr. Ouma is representing a party who is seeking to be enjoined to these proceedings. Until this court determines that pending application to decide whether to admit the proposed interested party or not, it would be a miscarriage of justice to deny that party or counsel representing that party audience with the court. In any case, there is no prejudice demonstrated in regard to allowing Mr. Ouma address the court. How then will he seek to be heard in the pending application?
13. I have considered the directions of the court captured by an order indicated on record as having been by consent. It is clear that on 22nd October 2024 when that order extending stay for a further period was granted, Mr Ouma was present for the intended interested party; Mr. Mungai was present for the 1st and 3rd defendants; Ms Njari was present for the 2nd defendant and Ms Kemunto for the Plaintiff. That order is specific that the 1st and 3rd defendants were required to give a progress report on the status of the appeals by way of affidavits and annexures demonstrating the progress or efforts made towards the progress of the appeals (emphasis added).
14. The above order has not been obeyed by the 1st and 3rd defendants. Indeed when Mr. Mungai submitted on the issue he did not refer the court to any filed material to that effect. It was submissions from the bar that the appeals are still pending and that the Court of Appeal is yet to list the appeals for hearing.
15. From the court record the appeal is said to have been filed in 2022. Time has passed and progress by way of the method stated in the consent order ought to have been presented to this court. In view of these circumstances, and noting that the 1st and 3rd defendants have failed to comply with the orders of this court, which orders were entered by the consent of the parties, this court is not persuaded to grant further stay of the proceedings pending the hearing and determination of the appeals, until there is evidence as the orders states. In the meantime, this court will proceed to take steps towards the determination of pending application, the Notice of Motion dated 24th August 2023.
16. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF MAY 2025.

S. N. MUTUKU

JUDGE

In the presence of:

1. Ms Vuchocho for the Plaintiff
2. M. Kimani Mungai for the 1st and 3rd Defendants
3. Ms Njari for the 2nd Defendant
4. Mr Ouma for the Intended Interested Party

