



REPUBLIC OF KENYA



KENYA LAW
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**Nairobi Star Publications Limited v Kariuki (Civil Appeal
E105 of 2025) [2025] KEHC 12175 (KLR) (Civ) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12175 (KLR)

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

CIVIL

CIVIL APPEAL E105 OF 2025

TW CHERERE, J

MAY 8, 2025

BETWEEN

THE NAIROBI STAR PUBLICATIONS LIMITED APPELLANT

AND

AGNES KAGURE KARIUKI RESPONDENT

RULING

“An appeal is not a warrant to freeze justice in motion; proceedings must not be stayed unless their continuation would hollow out the right of appeal.”

1. The Appellant approached this Court by way of Notice of Motion dated 04th April 2025, brought under Sections 3A and 63(e) of the [Civil Procedure Act](#) and Order 42 Rule 6 of the [Civil Procedure Rules](#). The Applicant seeks a stay of proceedings in Milimani CMCC No. 3665 of 2018 pending the hearing and determination of this appeal.
2. The application is supported by the affidavit of learned counsel Dennis C. Mungai sworn on 04th April 2025. The Appellant avers that;
 1. The trial court, by a ruling delivered on 06th February 2025, struck out the Appellant’s list and bundle of documents dated 21st January 2025
 2. Appellant is aggrieved by that decision
 3. Appellant has lodged the present appeal
 4. Unless proceedings in the trial court are stayed, it will suffer great prejudice by being deprived of the opportunity to present its documentary evidence in support of its case.



3. The Respondent opposed the application by a replying affidavit sworn on 17th April 2025. The Respondent argues that:
 1. The application was filed with inordinate delay
 2. No prejudice has been demonstrated
 3. No exceptional or special circumstances exist to warrant a stay of proceedings
 4. Stay of proceedings is a grave and exceptional remedy, and its grant would unjustly curtail the Respondent's right to a fair and expeditious trial in a suit that has been pending since 2018
 5. The application amounts to an abuse of the court process.
4. In a further affidavit sworn on 30th April 2025, counsel for the Applicant contends that the delay of one month and 26 days was occasioned by the unavailability of typed proceedings and ruling, which were requested by letter dated 06th February 2025.

Issues for determination

5. I have considered the notice of motion in light of the affidavits on record, submissions and cited authorities and the issues that arise for determination are:
 1. Whether the application was filed without inordinate delay
 2. Whether the Applicant has demonstrated exceptional circumstances warranting stay of proceedings
 3. Whether the Applicant will suffer prejudice if proceedings continue in the trial court
 4. Whether the interests of justice favour the grant of stay.

Analysis and Determination

6. On the first issue, the ruling sought to be appealed was delivered on 06th February 2025, and the application for stay was filed on 4th April 2025, approximately one month and 26 days later. The delay, while not overly long, must still be explained. The Applicant attributes the delay to the time taken to obtain typed proceedings. A copy of the request letter is annexed. I am satisfied that the delay has been explained and is excusable.
7. On the second issue, it is well established that a stay of proceedings is a drastic remedy granted only in exceptional circumstances. In *Julius v Mitei* (Civil Appeal E001 of 2021) [2022] KEHC 13295 (KLR), the Court held that stay of proceedings ought not to be granted merely because an appeal has been filed, but only where a clear case of injustice or hardship has been shown.
8. Similarly, in *Mbiti & Another v Thome* [2024] KEHC 5441 (KLR), the Court emphasized the need to guard against delaying the expeditious disposal of cases in subordinate courts through interlocutory appeals, unless a compelling reason exists.
9. The Applicant has not shown how the striking out of its documents causes such prejudice as would render the trial a nullity. In any event, the impugned ruling does not preclude the Applicant from participating in the hearing or from challenging any adverse finding through the appeal process.
10. As stated by the Court in *Gichubi Macharia & Another v Kiai Mbaki* [2016] KEHC 5149 (KLR), courts are enjoined to be reluctant to interfere with ongoing proceedings in the lower courts unless



continuation would defeat the very purpose of the appeal or render it nugatory. That is not the case here.

11. Although the Applicant invokes Article 159(2)(d) of the Constitution on substantive justice, no persuasive argument or evidence has been presented to show how that constitutional imperative is defeated by allowing the trial to proceed. Indeed, this Court is unable to assess the significance of the struck-out documents because they have not been annexed to the application. The importance of the omitted documents to the Applicant's case is therefore speculative.

Disposition

12. In the end, I find that the Applicant has failed to establish exceptional circumstances justifying a stay of proceedings. The issues raised can adequately be addressed in the appeal upon final determination. The interests of justice and the right to expeditious trial under Article 50 of the Constitution favour the continuation of the proceedings.
13. Accordingly, the Notice of Motion dated 04th April 2025 is hereby dismissed with costs to the Respondent.
14. This matter shall be mentioned before the Deputy Registrar on 05th June 2025 to confirm filing of the record of appeal.

DELIVERED AT NAIROBI THIS 08th DAY OF May 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances:-

Court Assistant - Nyambala

For Appellant - Mr. Mungai for Mohammed Muigai & Co. Advocates

For Respondent - Ms. Sheunda for Osundwa & Co. Advocates

