



REPUBLIC OF KENYA



KENYA LAW
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**Thang'wa v Kamene (Appeal E160 of 2024)
[2025] KEHC 5412 (KLR) (Family) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5412 (KLR)

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

FAMILY

APPEAL E160 OF 2024

H NAMISI, J

MAY 2, 2025

BETWEEN

HON PAUL KARUNGO THANG'WA APPLICANT

AND

JACKLINE MWENDE KAMENE RESPONDENT

RULING

1. Before the Court is Notice of Motion dated 21 November 2024 seeking the following orders:
 - i. Spent;
 - ii. Spent
 - iii. That pending the hearing and determination of the appeal, an order be and is hereby issued staying any further proceedings at Milimani Magistrates Court in Children Cause No. 1220 of 2017;
 - iv. That the costs of this Application be provided for.
2. The Application is premised on the grounds on the face thereof and supported by the Affidavit sworn by the Applicant. The Applicant avers that vide an Application dated 5 September 2024 and Notice to Show Cause dated 13 September 2024, the Respondent moved the Children's Court to recover Kshs 2,575,206/= from the Applicant, being alleged child maintenance arrears. The Applicant raised a Preliminary Objection on five grounds, including one on the jurisdiction of the Court. On 15 November 2024, the Children's Court delivered its Ruling, dismissing the Preliminary Objection and directed the Applicant to respond to the Notice to Show Cause within 14 days.



3. Being aggrieved by this decision, the Applicant lodged the appeal herein. The Applicant contended that if the proceedings in the lower court are not stayed, then this appeal will be rendered nugatory. The Applicant will be compelled to show cause in a claim for Kshs 2,575,206/=, which will occasion him substantial prejudice and loss.
4. In her Replying Affidavit, the Respondent averred that the Notice to Show Cause filed in the Children Court sought recovery of arrears from the Applicant for failing to comply with the orders of 26 April 2018 and judgement of 15 March 2019. As a result of the non-compliance with orders, the Respondent was left to shoulder the burden of the minor's education all through high school. The Respondent contended that the Applicant has not satisfied the requirements of Order 42 Rule 6(2) of the Civil Procedure Rules. The Respondent further contended that it is duplicitous for the Applicant to come to this Court seeking an equitable remedy, yet he does so with unclean hands. The Court ought not to exercise discretion in favor of a litigant who has no respect for the rule of law.
5. On record are two conflicting Affidavits sworn by the minor herein, G.P.
6. In the Affidavit dated 22 November 2024, sworn in support of the Application, the Minor confirmed that at present, she is 21 years old. She confirmed that her father, the Applicant, has always provided for her maintenance. She averred that even though the lower court's judgement of 15 March 2019 did not obligate the Applicant to maintain her, the Applicant took the initiative of enrolling the minor in a software engineering course at Moringa College in Nairobi after the minor completed her high school education. The minor confirmed that the Applicant catered for all her school fees until she completed her studies in September 2024. The minor stated that she had not sought any extension of parental responsibility, neither had she instructed anyone to institute any proceedings of any nature on her behalf. She expressed gratitude to her father, the Applicant, for his dedication and care.
7. In the second Affidavit dated 5 December 2024 sworn in reply to the Application, the minor averred the Applicant only began providing for her upkeep and maintenance from February 2024 by paying school fees at Moringa College. Prior thereto, the Applicant did not comply with the orders of the lower court, thus forcing the Respondent to take out the Notice to Show Cause. She claimed that the first Affidavit dated 22 November 2024 was given to her for her signature after the same had been drafted by the Applicant's counsel.
8. Parties were directed to canvass the Application by way of written submissions. Although the Applicant confirmed that they had filed their submissions, only the Respondent's submissions are on record.

Analysis and Determination

9. I have keenly read the Application, Affidavits and submissions filed herein. The issue for determination herein is whether the Applicant has met the conditions for the stay of proceedings pending appeal.
10. In *William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others* [2019] eKLR, the Court authoritatively laid out the principles that Courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court. They laid down the following six principles:
 - a. There must be an appeal pending before the higher Court;
 - b. Where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the



higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;

- c. The Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. The Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. The Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - f. The Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
11. Halsbury's Laws of England, 4th Edition, Vol. 37 at p. 330 states:
- “The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court's general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue...This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.”
12. In short, a stay of proceedings is a radical remedy which an appellate court will only exercise in exceptional circumstances.
13. In the present application, the Applicant argued that he is aggrieved by the Ruling and Order of the lower court, which form the basis of his appeal herein. The Order was as follows:
- i. That the Defendant's preliminary objection dated 1 October 2024 is hereby dismissed with no orders as to costs;
 - ii. That further, the Defendant is granted 14 days to respond to the Plaintiff's Notice to Show Cause dated 13 September 2024;
 - iii. That the Notice to Show Cause shall be canvassed through written submissions
14. The Applicant pleaded that if the stay of proceedings is not granted, he will be compelled to show cause in a claim of Kshs 2,575,206/-, thereby occasioning him substantial loss and prejudice.
15. I am not persuaded that the appeal will be rendered nugatory by the mere fact that the Applicant will be compelled to respond to the Notice to Show Cause and the trial court proceeds to determine the application on merit. The Respondent has not demonstrated how he will suffer substantial loss from defending himself before the trial court.



16. In the persuasive case of Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from 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 it is, on what terms it should be granted. 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 probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

17. Consequently, I find that the Application dated 21 November 2024 is without merit. It is hereby dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 2 DAY OF MAY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

.N/A.....for the Applicant

...Ms. Mwangi.....for the Respondent

Libertine Achieng..... Court Assistant

