



Apscope Limited v Tsusho Capital Kenya Limited & another (Civil Appeal E244 of 2025) [2025] KEHC 12228 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 12228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E244 OF 2025
TW CHERERE, J
JUNE 5, 2025**

BETWEEN

APSCOPE LIMITED APPELLANT

AND

TSUSHO CAPITAL KENYA LIMITED 1ST RESPONDENT

PAUL MATHENGE WANDERI 2ND RESPONDENT

RULING

1. The Appellant, by a Notice of Motion dated 01st May 2025, brought under Article 159 of *the Constitution*, Sections 1A, 3, and 3A of the *Civil Procedure Act*, and Order 51 Rule 1 of the Civil Procedure Rules, seeks the following orders:
 1. That there be a stay of proceedings in MCCCCOMM. 362 of 2019 pending the hearing and determination of the appeal herein;
 2. That the Court grants such further orders as it may deem fit.
2. The application is supported by an affidavit sworn by Caleb Kapten, a Director of the Appellant, who deposes that the lower court on 31st January 2025 delivered a ruling citing only the 2nd Respondent Defendant for contempt, despite the Appellant's application seeking to cite both Defendants. He avers that the Appellant has filed an appeal, that the Record of Appeal is ready save for the typed proceedings, and that the appeal raises important issues regarding selective enforcement of court orders. It is argued that unless the proceedings in the lower court are stayed, the appeal will be rendered nugatory.
3. The application was served. The 1st Respondent, through counsel, indicated that it was not opposed to the application. The 2nd Respondent neither filed a response nor attended court.
4. The only issue for determination is whether the Appellant has satisfied the threshold for stay of proceedings pending appeal.



5. A stay of proceedings is a drastic remedy that halts the ordinary course of litigation and interferes with the right to access justice under Article 50(1) of *the Constitution*. It is therefore reserved for exceptional cases where clear and compelling reasons are demonstrated.
6. In *David Morton Silverstein v Atsango Chesoni* [2002] KECA 287 (KLR), the Court of Appeal held that the power to grant a stay of proceedings is discretionary and must be exercised judiciously depending on the specific facts.
7. In this case, the Appellant contends that the proceedings should be stayed to preserve the integrity of the appeal. However, beyond the assertion that the appeal might be rendered nugatory, no specific prejudice has been demonstrated. There is no evidence that the trial court is acting in conflict with the appellate process.
8. In *Global Tours & Travels Ltd; Nairobi HC Winding Up Cause No. 43 of 2000*, the Court emphasized that the question is whether it is in the interest of justice to order a stay, requiring a balancing of the competing rights of the parties.
9. In the present case, the Appellant has not shown how the mere progression of the lower court matter, would occasion any irreparable harm or procedural injustice. No specific prejudice has been identified that would outweigh the public interest in the expeditious resolution of the case before the trial court.
10. *Kenya Wildlife Service v James Mutembei* [2019] eKLR reminds us that a stay of proceedings is a grave measure that must not be used to delay litigation and should only be granted in the clearest of cases. The ruling under challenge concerns a contempt application, a distinct interlocutory matter, while the main suit remains active. The Appellant retains the right to prosecute its case and appeal the contempt ruling.
11. In *MRM aka RLM v SMRM (Civil Appeal 124 of 2022)* [2024] KEHC 446 (KLR), the Court reiterated that stay should only be granted where a jurisdictional issue is raised or there is risk of prejudice that cannot be cured. In this case, no such jurisdictional defect or irreparable risk has been demonstrated.
12. *Richard Nchapi Leiyagu v IEBC & 2 Others* [2013] eKLR affirmed the centrality of the right to be heard as a cornerstone of the rule of law. Any stay of proceedings must therefore be carefully scrutinized to avoid infringing upon the Respondent's right to a fair and timely hearing.
13. Collectively, these cases demonstrate that a stay of proceedings is not granted merely because an appeal is pending. It must be shown that continuation of proceedings would render the appeal nugatory or cause prejudice beyond the normal inconvenience of litigation. The appeal challenges an interlocutory ruling; it does not raise threshold issues that affect the foundation of the trial.
14. Accordingly, the Notice of Motion dated 01st May 2025 is hereby dismissed. As the Respondents did not oppose the application, there shall be no order as to costs.
15. This matter shall be mentioned before the Deputy Registrar on 31st July 2025 to confirm filing of the record of appeal.

DELIVERED AT NAIROBI THIS 05TH DAY OF JUNE 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances



Court Assistant - Nyambala

For Appellant - Ms. Kungu for Ricar Advocates LLP

For Respondents - Mr. Gekonge Nyaanga & Mugisha Advocates

