



REPUBLIC OF KENYA



**KENYA LAW**  
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**LWN v SNT (Civil Appeal E005 of 2025)  
[2025] KEHC 8694 (KLR) (Family) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8694 (KLR)

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

**FAMILY  
CIVIL APPEAL E005 OF 2025**

**CJ KENDAGOR, J**

**JUNE 5, 2025**

**BETWEEN**

**LWN ..... APPLICANT**

**AND**

**SNT ..... RESPONDENT**

**RULING**

1. The Parties herein are involved in a divorce matter before the Lower Court - Chief Magistrates' Court Milimani – Family Court, Divorce Cause No. E889 of 2024. The Respondent filed the Divorce Cause.
2. Before the matter could be heard, the Appellant filed a Notice of Motion Application dated 14<sup>th</sup> October, 2024, which, upon hearing, the trial Court dismissed in a ruling delivered on 11<sup>th</sup> December, 2024.
3. The Application sought that the divorce petition and the amended petition be struck out on the grounds that a stranger signed the Petition and not the Respondent (Petitioner therein). The trial Court ruled in favour of the Respondent, who asserted that he was the one who signed the Petition.
4. The Appellant, dissatisfied with that decision, has lodged the present appeal based on the grounds outlined in the memorandum of appeal dated 10<sup>th</sup> January, 2025.
5. What is presently before this Court for consideration is an application dated 7<sup>th</sup> February ,2025. The Appellant/Applicant seeks the following orders;
  - i. Spent
  - ii. Stay of proceedings in the Magistrate’s Court Divorce Cause No. E889 of 2024 at Milimani Law Courts pending the hearing and determination of this application.



- iii. Stay of proceedings pending the hearing and determination of this appeal.
6. The application is supported by an affidavit of even date and a further affidavit sworn on 29<sup>th</sup> April, 2021 by the Applicant. The application is opposed. The Respondent filed a replying affidavit sworn on 1<sup>st</sup> April, 2025.
  7. The application was canvassed by way of written submissions, and both parties filed submissions, which I have duly considered.
  8. The Applicant contends that she has an arguable appeal with a likelihood of success, and further that the appeal will be rendered nugatory if the stay of proceedings is not granted.
  9. The Respondent on the other end contends that the appeal is frivolous and further that the stay of proceedings is not merited.
  10. The issue for determination is whether there should be a stay of proceedings in the Magistrates' Court Divorce Cause No. E889 of 2024 at Milimani Law Courts pending the hearing and determination of the Appeal.
  11. The Courts have held that the decision on whether to stay proceedings is purely a matter for judicial discretion and that Courts should only issue a stay of proceedings in exceptional circumstances.
  12. This approach was restated by the Court in *Global Tours & Travel Ltd HCWC No. 43 of 2000*, where the Court held as follows;

“... 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 the case, 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...”

13. In *F K M v N K M [2018] eKLR*, the Court discussed the issue of stay of proceedings and held as follows;

“

“10. The Appellant/Applicant has prayed for a stay of proceedings in the lower Court. The law does not provide for application for stay of proceedings. However, Order 42 Rule 6 (1) does state that no appeal or second appeal shall operate as a stay of execution or proceedings. The learned authors of *Halsbury's Laws of England*, 4<sup>th</sup> Edition, Vol 37 pages 330-332 while discussing the Court's general practice with regard to stay of proceedings stated:

“The stay of proceedings is a serious, grave and fundamental interference 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 should not be allowed to continue.”

14. The grounds of appeal summarized are that the Applicant contests the decision by the Court declining to strike out the divorce petition on the ground that it was signed by a stranger who is not the Respondent (petitioner in the divorce cause). The Respondent, on the other hand, in the affidavits stated that he is the one who signed the petition.
15. I have considered the issues raised in the current application along with the responses. The application was brought without delay. Although the validity of pleadings is an arguable ground for appeal, the issue of the Respondent acknowledging that the contested signature is his cannot be wholly disregarded at this stage, even as the Court reserves the hearing of the appeal.
16. The Court must also take into account the crucial importance of resolving matters promptly. The Applicant has submitted that the Respondent will suffer no prejudice beyond the ‘usual delay in litigation’. Delay is not only unacceptable but should also never become the standard. The ultimate aim is and should be for matters to be heard and determined swiftly.
17. The ruling issued by the trial court pertained to an application; the main hearing is pending. The parties indicated that the trial Court has already scheduled a hearing. Notably, the dispute regarding the signature is an issue that can also be raised during the divorce cause hearing. Additionally, should the Court find in favour of the Appellant in the appeal, there are avenues for recourse and potential legal implications.
18. After careful consideration, I conclude that there are no exceptional circumstances to justify a stay of the divorce proceedings. The application is dismissed with costs in the cause.
19. To expedite the conclusion of the appeal, the Appellant is directed to file the record of appeal within 21 days.
20. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 5<sup>TH</sup> DAY OF JUNE, 2025.**

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**C. KENDAGOR**  
**JUDGE**

In the presence of:

Court Assistant: Beryl

