



**Milestone Games Limited & 4 others v Nation Media Group Limited & 7 others
(Civil Case E018 of 2022) [2025] KEHC 8586 (KLR) (Civ) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8586 (KLR)

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

CIVIL

CIVIL CASE E018 OF 2022

JN MULWA, J

JUNE 19, 2025

BETWEEN

**MILESTONE GAMES LIMITED 1ST PLAINTIFF
RONALD KAMWIKO KARAURI 2ND PLAINTIFF
NIKOLOV GUERASSIM NIKOLOV 3RD PLAINTIFF
GENE GRAND 4TH PLAINTIFF
PEVANS EAST AFRICA LIMITED 5TH PLAINTIFF**

AND

**NATION MEDIA GROUP LIMITED 1ST DEFENDANT
JOHN KAMAU 2ND DEFENDANT
FINANCE UNCOVERED LIMITED 3RD DEFENDANT
PAUL WAFULA 4TH DEFENDANT
PAUL WANDERI NDUNGU 5TH DEFENDANT
GOOGLE LLC 6TH DEFENDANT
YOUTUBE LLC 7TH DEFENDANT
GOOGLE KENYA LIMITED 8TH DEFENDANT**



RULING

1. Paul Wanderi Ndungu (hereafter the 5th Defendant/Applicant) by his motion dated 22/03/2025 brought pursuant to Section 1A, 1B & 3A of the Civil Procedure Act (CPA) seeks for the following orders-
 - i. Spent.
 - ii. Spent.
 - iii. That there be an order staying the proceedings before this Court pending hearing and determination of the intended appeal.
 - iv. That the costs of this application be provided for.
2. The application is premised on the grounds on its face thereof and supported by an affidavit sworn by the said Paul Wanderi Ndungu on 22/03/2025. The gist of his deposition is that being aggrieved by the decision of this Court delivered on 06/02/2025, by way of Notice of Appeal filed on 20/02/2025, he intends to appeal against the said decision of this Court. He goes on to depose that it is necessary to stay any further proceedings in the matter pending hearing and determination of the intended appeal in order to prevent an embarrassing situation should the intended appeal succeed. He concludes by stating that the order of stay of proceedings being sought is an equitable remedy, which this Court ought to grant, as sufficient reasons have been demonstrated to warrant issuance of the said order.
3. Pevans East Africa Ltd, Milestone Games Ltd, Ronald Karauri, Nikolov Guerassim and Gene Grand (hereafter the 1st, 2nd, 3rd 4th & 5th Plaintiffs/Respondents) oppose the motion by way of grounds of opposition dated 07/04/2024 and a replying affidavit deposed by Ronald Kamwiko Karauri, the 3rd plaintiff dated 30/4/2025. He takes issue with the motion by deposing that the same is intent on delaying the hearing and determination of the suit given on account of numerous interlocutory applications the Applicant has filed that have since been determined, meanwhile has preferred appeals against the said decisions of which he has since not prosecuted. He goes on to depose that the Applicant has not demonstrated any prejudice he is likely to suffer if the suit were to proceed for hearing if stay of proceedings is not granted.
4. Further he deposes that the judgment rendered during the subsistence of his appeal is capable of being stayed; adding that the Applicant has not demonstrated that there exists an appeal before the Court of Appeal to warrant issuance of the order on stay of proceedings before this Court. In summation he deposes that notwithstanding the Applicant's right to fair hearing the same has to be balanced against the Respondents right towards a speedy and expeditious trial.
5. In a brief rejoinder by way of further affidavit dated 9/06/2024, Paul Wanderi Ndungu states that there has been delay in providing certified copy of proceedings that hindered his prompt filing of an appeal nevertheless the same has since been filed as at 30/05/2025. He concludes that the instant application has been filed in good faith and is merited therefore the Court ought to stay the instant proceedings pending the hearing and determination of his appeal.
6. Nation Media Group Ltd, John Kamau, Paul Wafula and Google Kenya Ltd (hereafter the 1st, 2nd, 4th & 8th Defendant/Respondent) opted not to file any response to the motion. Finance Uncovered Ltd, Google LLC and YouTube LLC (hereafter 3rd, 6th & 7th Defendant/Respondent) did not participate in the instant proceedings.



7. Directions were issued on disposal of the Applicant's motion by way of submissions. Having considered the rival affidavit material alongside the respective parties' submission thereto, it is the Court's postulation that the issues for determination concern: -
 - a. Whether the Court ought to grant an order of stay of proceedings pending hearing and determination of the Applicant's appeal?
 - b. Who ought to bear the costs of the motion?

Whether the Court ought to grant an order of stay of proceedings pending hearing and determination of the instant appeal?

8. In presenting the instant motion, the Applicant has relied on Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court", to wit, this Court's inherent powers was judiciously addressed by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR, as such requires no restatement. That said, this Court's authority to issue an order in the effect of stay of proceedings pending appeal is donated by Order 42 Rule 6(1) of the CPR, which provides that: -
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
9. In urging the Court to allow the motion, counsel for the Applicant relied on the of-cited decision in *Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000* to argue that the motion has met all the requisite ingredients to warrant a stay of proceedings pending appeal. It was further submitted that the substratum of the appeal is not the statements of which have now been purportedly withdrawn but the situation that obtains as a result of the impugned ruling of this Court that is the subject of an appeal.
10. It is a further argument that by the 1st, 2nd, 3rd, 4th & 5th Plaintiff/Respondent act of withdrawing the impugned statements, it appears to be a backroom review or appeal of this Court's orders whereas at the very outset the Applicant's motion ought to have been allowed.
11. In retort, the 1st, 2nd, 4th & 8th Defendants/Respondents submit that the Applicant has not demonstrated that there in an appeal before the higher Court; explained why stay of proceedings has not been sought before the higher Court; demonstrated that the intended appeal raises substantial questions or is arguable; and or demonstrated any exceptional circumstances to warrant the stay of proceedings before this Court. That in any event, the Applicant's motion ought to be dismissed for being an abuse of the Court process, citing decisions in *Turbo Highway Eldoret Ltd v Muniu* [2022] KEHC 10197 (KLR), *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR) and *Satya Bhamu Gandhi v Director of Public Prosecutions & 3 others* [2018] KEHC 6100 (KLR).



12. With the above in reserve, Ringera, J (as he then was) in the of-cited decision of *Re Global Tours & Travel Ltd Nairobi* (supra) spelt out the applicable considerations in determining an application for stay of proceedings, 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 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.”

13. Further, it may be observed that the need to avoid unnecessary proliferation of proceedings and needlessly dissipating limited judicial resources, are equally key considerations in an application of this nature. The Court of Appeal in *Raymond Ruto & 5 others v Stephen Kibowen* [2021] KECA 745 (KLR) exhorted that: -

“We acknowledge at the outset, that a court will sparingly and only in exceptional circumstances will it grant an order to stay proceedings which essentially is an interruption of the other parties right to conduct their hearing....”

14. The learned authors of; *Halsbury’s Law of England*, 4th Edition. Vol. 37 page 330 and 332, have also given some principles to bring to bear while considering whether or not a court should stay proceedings as follows: -

“...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 proceeding beyond all 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...”

15. Aside from the above, due cognizance must be taken of the fact that there is an imposed duty on this Court by dint of Section 1A & 1B of the CPA to progress the overriding objectives towards the just, expeditious, proportionate and affordable resolution of matters before a Court. Here, having considered the rival arguments, it can be noted that vide his further affidavit the Applicant has demonstrated that he has since filed an appeal before the Court of Appeal and since obtained certified copy of proceedings towards filing of a record of appeal. See “Annexure PWN-1 & PWN-2”.

16. Indubitably, this Court agrees that stay of proceedings pending appeal ought to be granted sparingly and only in exceptional circumstances given the scarcity of judicial and necessity towards utilization of judicial time. In spite of the other prerequisites to be considered in respect of the Applicant’s motion, this Court must ask itself whether the Applicant has demonstrated such exceptional circumstances notwithstanding the appeal that has since been presented before a higher Court and whether failure to stay proceedings would prejudice the Applicant?



17. To answer the above, this Court must tread lightly so as not to prejudice and or embarrass the appellate proceedings. It must be remembered that the gist of the Applicant's motion that resulted in the impugned ruling sought to strike out specific witness statements filed by the 3rd 4th & 5th Plaintiff/Respondent. This Court vide its ruling dismissed the Applicant's motion thereby prompting the appeal before the superior Court. The Applicant's declined motion revolved around the Plaintiffs/Respondent's failure to comply with rules of procedure prior to filing the disputed statements, the variance emanating from the disputed statements and their implication on the Applicant's defence. A perusal of the record, by way of the Case Tracking System (CTS) reveals that the 3rd Plaintiff/Respondents has since filed a Notice of Withdrawal in respect of its witness statement dated 31/01/2022. While the appeal before the Court of Appeal by way of "Annexure PWN-2" appears to question in law and in fact the impugned ruling of this Court over admission of witness of statements out of time; application of Article 159 of the Constitution in respect of the impugned statements; the Applicant's purported inability to effectually prepare a defence on the premise of the Plaintiffs/Respondents alternate witness statements; propriety of the Plaintiffs/Respondents alternate witness statements; and Court's misapprehension and misapplication of the fact that what was sought to be struck out were pleadings, it must be remembered that, the instant suit is yet to proceedings for hearing.
18. As is, by way of the respective parties' pleadings, the Applicant is appraised of the gist if the Plaintiffs/Respondents cause of action. It is trite that cases are tried and determined on the foundation of pleadings and evidence in support of the pleadings. At the risk of repetition, the Applicant is as at writing of this ruling in possession of the pleadings and documentary evidence intended to be relied on by the Plaintiffs/Respondents. Auxiliary to the forestated, the Applicant is equally in possession of witness statements to be relied on by the Plaintiffs/Respondents. No amendment of pleadings or filing of further witness statements has since been sought by the Applicant, on accord of an implied or actual disadvantage to enable it effectively tackle any variance to the Plaintiffs/Respondents suit. Therefore, for all intents and purposes in spite of the above, this Court does not conceive any possible prejudice that is likely to be visited upon the Applicant and or demonstration of any exceptional circumstance to warrant the stay of proceedings before this Court. To the above end, this Court reasonably believes that it has addressed itself sufficiently to the Applicant's motion lest it pre-empts the outcome of the proceedings before the appellate Court.
19. Between now and 30/7/2024 when the suit is slated for hearing, the Applicant has ample time to move the Court appropriately if need be, concerning his pleadings, intended evidence and witness statements. To stay proceedings herein, would only serve the purpose of abrogation of the duty imposed upon this Court by dint of Section 1A & 1B of the CPA and deny the Respondents the Constitutional right to have the case expeditiously disposed of.
20. In the circumstances, applying my mind to the law, the above considerations and facts of this case, the Court is not inclined and or convinced to allow the Applicants motion dated 22/3/2025. It is dismissed with attendant costs to Plaintiffs/Respondents.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF JUNE, 2025

.....
JANET MULWA.
JUDGE

