



**Indetie & another v Indetie (Civil Appeal E065 of 2025)
[2025] KEHC 9859 (KLR) (Family) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E065 OF 2025
PM NYAUNDI, J
JULY 4, 2025**

BETWEEN

JAMIE JARED INDETIE 1ST APPLICANT

SEAN GABRIEL INDETIE 2ND APPLICANT

AND

LIVINGSTONE MALIKA INDETIE RESPONDENT

(Being an appeal against the ruling of Hon. Dr. Alice W. Macharia delivered on 17th April 2024 (Sic) in Children’s Magistrate’s Court at Milimani Civil Suit No. E800 of 2023 Jamie Jared Indetie & Sean Gabriel Indetie Versus Livingstone Malika Indetie)

RULING

1. The Applicant being aggrieved by ruling of the Court on 17th April 2025 in which the Court declined to recuse itself. They have lodged Memorandum of Appeal dated 5th May 2025 and the same is accompanied by application dated 2nd May 2025, in which they seek stay of execution and further proceedings in Milimani Civil Suit No. E800 of 2023 pending the determination of the appeal.
2. It is averred that unless stay is granted the applicants stands a great risk of having his right to a fair trial contravened should the subordinate court proceed with the hearing. It is further submitted that unless stay is granted the intended appeal will be rendered nugatory Vide Notice of Motion dated 11th July 2024 an and a pure academic exercise. It is submitted further that unless the orders of stay of proceedings is granted the applicants will suffer substantial loss as the matters involve maintenance and thei welfare.
3. The Application is presented under Order 42 Rule 6 of the Civil procedure Rules, Section 1A, 1B, 3A and 79 G of the Civil Procedure Act, Article 159(2) (d) of the Constitution of Kenya.



4. The Respondent did not participate in this application, the Applicants submissions are dated 12th June 2025. The Applicant identifies two issues for determination, whether the application has merit and whether the application is prejudicial to the respondent.
5. Reliance is placed on the following authorities; County Government of Migori v INB Management & IT Consulting Limited [2020] eKLR; Global Tours Travels Limited vs Five Continents Travels Limited [2015] eKLR; and JMK V EW [2024] KEHC 345 and FCM (Suing as the Next Friend of GCM, BCM and BKN (Minors) v LMM [2024] KEHC 10926
6. The principles to guide a court in considering an application of stay of proceedings pending appeal is well established and set out under Order 42 Rule 6 of the Civil procedure rules as hereunder;-
 - (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.
 - (2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
 - (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
 - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
 - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 - (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
7. There is a plethora of court decisions on the interpretation of this provision and it is therefore settled that in exercising its discretion on whether or not to grant stay of proceedings the Court, as was stated in the decision of William Odhiambo Ramogi & 2 Others Vs. The Honourable Attorney General & 3 Others [2019] eKLR, will consider the following- six principles:
 - a. First, there must be an appeal pending before the higher Court;
 - b. Second, 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. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, 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. Sixth, the Applicant must demonstrate that the Application for stay was filed expeditiously and without delay.
8. Having regard to these principles, I observe that the application was filed expeditiously and further that the applicants have demonstrated that they have an arguable appeal. The issue therefore on which this application will turn is whether the denial of the orders sought, will render the intended appeal nugatory and occasion substantial loss to the Applicant.
9. In arriving at my decision, I am guided further by the decisions in *Mbiti & Another v Thome & Another* (Civil Appeal E010 of 2024) [2024] KEHC 5441 (KLR) (20 May 2024) (Ruling) which reiterated the decision in *Kenya Wildlife Service v James Mutembei* [2019] eKLR, to the effect that the conditions for grant of stay of proceedings will be more stringent than that of stay of execution.
10. The Courts in the above decisions were guided by the guidelines set out in *Halsbury's Law of England*, 4th Edition, Vol. 37 page 330 and 332 state-

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 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. 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 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 the case.

11. In the recent decision of the Court of Appeal in *M/S Karsan Ramji & Sons Limited v Athumani & another* (Suing for and on behalf of the Wamwanyundo Clan & 6 others (Civil Application E034 of 2023) [2024] KECA 563 (KLR) (24 May 2024) (Ruling), the Court reiterated the principles cited above and added that, each case must be considered on its own facts and circumstances and only where a deserving case is made, will the Court issue an order staying proceedings.



12. In that decision the Court cited with approval the pronouncement by the Court in Stanley Kangethe Kinyanjui V Tony Ketter & 5 others [2013] KECA 378 (KLR) where it stated

Whether or not an appeal will be rendered nugatory depends on whether what is sought to be stayed if allowed to happen will be reversible, or if it is not reversible whether damages will reasonably compensate the party aggrieved.

13. The Court in denying stay of proceedings made the following observations-

[29].... These remarks aptly apply to the application before us. What will happen if we do not grant the stay sought is that the appeal in the High Court will be heard and may well be determined. But when the appeal already lodged is heard, determined and, if it succeeded, what would automatically follow is that the proceedings in the High Court would have been rendered unnecessary, but an appropriate order for costs can be made to remedy that. However, the appeal in this Court would not have been rendered nugatory.

14. The reasoning of the Court is cogent, I am obligated to weigh the interests of the Applicant against those of the respondents. The applicant contends unless stay is granted his rights to a fair trial will be infringed and the appeal rendered nugatory. If the matter in the trial court proceeds to hearing the applicant will still have an opportunity if dissatisfied with the decision to appeal to the higher Court. His right to fair trial is therefore safeguarded in that regard. The respondent also has a right to quick and expeditious determination.

15. I will therefore deny stay. The Applicants if they elect to proceed with the appeal will file and serve record of appeal within 45 days.

16. Mention on August 13, 2025 before the Deputy Registrar to confirm compliance and take directions on the hearing of the appeal.

17. Since the Respondent did not participate in the proceedings there shall be no order as to costs

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF JULY 2025.

P. M. NYAUNDI

JUDGE

In the Presence of

Muhia for Appellant/Applicant

Fardosa Court Assistant

