



Mwangi v Owino (Civil Appeal E233 of 2024) [2025] KEHC 10159 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E233 OF 2024**

G MUTAI, J

JULY 2, 2025

BETWEEN

PETER KARIUKI MWANGI APPELLANT

AND

EMILY OWINO RESPONDENT

RULING

1. The application before the court is dated 7th August 2024. Vide the said application, the appellant/applicant seeks to stay proceedings in the Mombasa Small Claims Court Cause No. 150 of 2024 pending the hearing and determination of the intended appeal.
2. The application is supported by the annexed affidavit of the appellant/applicant and also on the ground in the body of the motion. I note that the appellant/applicant filed an application in the court below seeking to set aside the interlocutory judgment. The application was dismissed. Being dissatisfied with the decision, the appellant/applicant has appealed against it. It is his fervent belief that his appeal has an overwhelming chance of success since he was not the owner of the motor vehicle at the time of the subject accident and cannot be held liable for the accident in which the said car was involved at the material time.
3. The appellant/applicant apprehends that he is about to be subjected to execution, which action will occasion him irreparable loss and damage. He contends that the appeal, if the execution proceeds, will be rendered nugatory and an academic exercise.
4. The appellant/applicant averred that he was willing to comply with any conditions that the court may give in granting the orders sought.
5. The application is opposed. The respondent filed a replying affidavit sworn on 27th August 2024, in which she averred that the application was misconceived, bad in law and an abuse of the court process. She urged that the appellant/applicant had not laid down any basis for the grant of the orders sought, and the application was time-barred.



6. The respondent deposed that the appellant/applicant was served with a mention notice and statement of claim through WhatsApp via his number +2547XX42X64X on 25th and 29th April 2024. She contended that the appellant/applicant hadn't successfully contested ownership of motor vehicle registration number KCM 5X8G as he was its registered owner at the time of the accident, according to the NTSA records.
7. The respondent stated that no plausible reason was given for the failure to attend court on the dates the matter was before the court below. She averred that the appellant/applicant did not provide an excusable reason to enable the court to exercise its discretion in his favour.
8. Ms Owino deposed that the court of equity aids the diligent and not the indolent and that it would be in the interest of justice for the application to be dismissed.
9. The application was canvassed through written submissions. The submissions of the appellant/applicant are dated 28th January 2025. Those of the respondent are dated 27th November 2024.
10. In his submissions, the appellant/applicant's counsel, Wachira King'angai, submitted that it had to be shown that the appellant/applicant would suffer substantial loss unless a stay were granted, that the application was filed without undue delay, and that the appellant/applicant would suffer prejudice unless the application were allowed and that security had been provided.
11. On the first test, it was urged based on the decision of the court in *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR) that the appellant/applicant would have been condemned unheard unless the orders sought were issued.
12. Counsel contended that the loss likely to be suffered had been particularized as required by the decision of the court in *Machira t/a Machira & Co Advocates v East African Standard* [2002] KEHC 1167 (KLR).
13. Counsel for the appellant/applicant submitted that the application was filed promptly and without undue delay. It was also submitted that if the appeal were allowed, the judgment would not be invalidated by the fact that it was delivered outside the period during which decisions are meant to be delivered in Small Claims Court matters.
14. The appellant/applicant's counsel urged that his client was ready and willing to deposit such security as was necessary or as the court may direct. Reliance was placed on the decision of the court in *Absalom Dova v Tarbo Transporters* [2013] eKLR. The court was urged to allow the application.
15. The respondent opposed the application. Her counsel, Joe Ngugi & Co. Advocates, stated that the appellant/applicant did not seek a stay of execution, but rather a stay of proceedings. He urged that the court could not grant orders that were not sought.
16. Regarding the stay of proceedings, it was argued that the applicant had to demonstrate an arguable case, not a frivolous one. Reliance was placed on the decision of the court in the case of *Kiu & another v Khaemba & 3 others* [2021] KECA 318 (KLR). Mr Ngugi urged that the orders sought contravened Section 38(1) of the *Small Claims Court Act*.
17. Counsel submitted that although the impugned decision was delivered on 28th May 2024, it was only on 5th August 2024 that the application was filed. The delay was deemed to be inordinate and inexcusable. The application, counsel urged, was a calculated move to deny the respondent recourse to execution.



18. Counsel submitted that the conditions for a stay of proceedings were high and stringent, as it could deny a party access to justice. Reliance was placed on the case of *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR).
19. Further, it was urged that the application was statute-barred as the lower court matter had been heard and determined.
20. Counsel thus prayed that the application be dismissed with costs.
21. I have considered the application dated 5th August 2024, the supporting affidavit and its annexures, the responses thereto, as well as the submissions of the parties. The application seeks a stay of proceedings in the Mombasa Small Claims Court, Cause No. E150 of 2024, pending the hearing and determination of the appeal.
22. The conditions that an applicant for an order of stay of proceedings pending appeal must satisfy have been discussed in several decisions of the courts of record. In *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR), the court held as follows:-

“Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceeding is high and stringent. See Ringera J in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000* persuasively stated thus;

“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” (emphasis added)

23. In *Turbo Highway Eldoret Ltd v Muniu* [2022] KEHC 10197 (KLR) the Court stated as follows:-

“22. What emerges from the discussion above is that the grant of a stay of proceedings pending the hearing of an interlocutory appeal in civil matters is a rare and exceptional remedy.

23. As a general matter, an appellate court will only exercise its discretion to grant a stay of proceedings pending an appeal over an interlocutory matter before a magistrate’s Court or Tribunal only in exceptional circumstances. While difficult to determine with mathematical precision when the Court will use this power, it is only to be sparingly used where, in the words of South African authors, Gardiner and Lansdown (6th Ed. Vol. 1 p. 750), “grave injustice might otherwise result or where justice might not by other means be attained.” As the authors correctly write, the Court will generally “hesitate to intervene,



especially having regard to the effect of such a procedure upon the continuity of proceedings in the Court below.”

24. Hence, the propriety of granting a stay of proceedings pending an appeal over interlocutory matters is decided on the facts of each case and with “due regard to the salutary general rule that appeals are not entertained piecemeal.” (Walhaus & Others v Additional Magistrate, Johannesburg & Another, 1959 (3) SA 113(A) at 120D; S. v Western Areas Ltd & Others 2005 (5) SA 214 (SCA) at 224D.

24. It would appear to me that the appellant /applicant was served with the pleadings in respect of the proceedings in the court below. Despite being served, the applicant did not respond and was extremely indolent.

25. That said, there is an arguable case that the motor vehicle may not have belonged to the appellant at the time of the accident. If that is indeed the case and the applicant pays the decretal sum, he may suffer substantial loss. In the circumstances, I allow the application dated 5th August 2024 and order that the proceedings in the court below be stayed pending the hearing and determination of the appeal, on the condition that the decretal sum be deposited in court within 30 days of the date hereof. Failing this, the stay hereby granted shall lapse automatically.

26. The costs of the application shall be costs in the appeal.

27. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 2ND DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Cheptoo, holding brief for Mr Ngugi, for the Respondent;

No appearance for the Appellant/Applicant; and

Arthur – Court Assistant.

