



**Keith & 3 others v Monari & 3 others (Civil Case E278 of 2020)  
[2025] KEHC 13500 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13500 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E278 OF 2020  
FG MUGAMBI, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**KENNETH HAMISH WOOLER KEITH ..... 1<sup>ST</sup> APPLICANT  
ASHWINI BHANDARI ..... 2<sup>ND</sup> APPLICANT  
NIGEL VAUGHAN JEREMY ..... 3<sup>RD</sup> APPLICANT  
JULIUS WAKO ..... 4<sup>TH</sup> APPLICANT**

**AND**

**EVANS MONARI ..... 1<sup>ST</sup> RESPONDENT  
ANTHONY NJOGU ..... 2<sup>ND</sup> RESPONDENT  
SEAN OMONDI ..... 3<sup>RD</sup> RESPONDENT  
NJAU MUKUHA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction and Background**

1. This Court is called upon to determine the Notice of Motion dated 3<sup>rd</sup> February 2025, brought under Article 165(6) of *the Constitution* of Kenya 2010, Order 42 Rule 6, Order 49 Rule 7 (2) and Order 51 Rule 1 of the Civil Procedure Rules 2010. The applicant seeks a stay of proceedings and in particular, in respect of the hearing of the main suit or issuance of directions on the hearing of the suit pending the hearing and determination of their appeal dated 31<sup>st</sup> January 2025.
2. The application is supported by the annexed affidavit of Kenneth Hamish Wooler Keith. It is premised on the grounds that on 20<sup>th</sup> December 2024, this Honourable Court (Hon. Noelle Kyanya, Deputy



- Registrar) delivered a ruling dismissing the applicants' Notice of Motion dated 1<sup>st</sup> March 2021. That application had sought to have the main suit marked as abated pursuant to the provisions of Order 5 Rule 1(6) of the Civil Procedure Rules, 2010. Dissatisfied with the said ruling, the applicants have since lodged an appeal, which they contend raises arguable grounds with a real prospect of success.
3. The applicants further contend that the very existence and viability of the suit is in question and that proceeding with its hearing before the pending appeal is disposed of would irredeemably prejudice them. They urge that failure to grant a stay will render their appeal nugatory.
  4. The application is opposed by way of a replying affidavit sworn on 10<sup>th</sup> February 2025 by Anthony Njogu, the 2<sup>nd</sup> respondent, who also depones on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> respondents following the demise of the 1<sup>st</sup> respondent. He states that the application is the second of its kind seeking stay pending appeal, yet the matter has now been in court for over five years without reaching a substantive hearing. He contends that this prolonged delay offends the respondents' constitutional right to a fair and expeditious trial under Articles 50 and 159(2)(b) of *the Constitution*.
  5. The respondents contend that the applicants previously resisted the Deputy Registrar's referral of their earlier motion to a Judge, which led to nearly three years of delay before they eventually succeeded on appeal. The respondents argue that it is therefore disingenuous for them to now fault the Deputy Registrar's decision. It is their case that the applicants' right of appeal must be balanced against the respondents' equal right to have their case heard expeditiously.
  6. The respondents argue that the applicants will suffer no prejudice if the suit proceeds, since any successful appeal would still be given effect by setting aside proceedings or orders made in the interim. On the other hand, the respondents stand to suffer continuing and irreparable prejudice from delay, tragically underscored by the death of the 1<sup>st</sup> respondent before his case could be heard.
  7. The deponent further argues that the applicants have not demonstrated any exceptional circumstances to justify a stay of proceedings. He emphasizes that participation in legal proceedings does not amount to irreparable harm, whereas a stay would only exacerbate delay to the respondents' detriment. He highlights that the suit concerns the taking of accounts following retirement from the law firm of Daly & Figgis Advocates, and warns that prolonged delay risks frustrating any relief that may eventually be awarded, particularly as some applicants have already retired from practice.
  8. Finally, the deponent underscores that the applicants' conduct undermines the overriding objective under Section 1A of the *Civil Procedure Act*, which requires parties to assist the Court in ensuring the just, expeditious, proportionate, and affordable resolution of disputes. He notes that much of the applicants' motion improperly canvasses the merits of the intended appeal, which is the preserve of the appellate court. In his view, the appeal itself lacks merit as the Deputy Registrar's refusal to mark the suit as abated was fair, correct, and properly exercised discretion.

### **Analysis and Determination**

9. The principles guiding the grant of stay of proceedings pending appeal are settled. Stay of proceedings is discretionary and should be exercised sparingly, in exceptional circumstances, where the applicant demonstrates that an appeal is arguable, that it may be rendered nugatory unless stay is granted, and that the balance of justice tilts in favour of granting such relief. (See *Kenya Wildlife Service V James Mutembei*, [2019] eKLR; *Global Tours & Travel Ltd, HC Winding Up Cause No. 43 of 2000*).
10. The applicants have annexed to their application a Memorandum of Appeal dated 31<sup>st</sup> January 2025. The gravamen of their appeal is the Deputy Registrar's refusal to find that the suit had abated by



operation of law under Order 5 Rule 1(6) of the Civil Procedure Rules, on account of failure to collect and serve summons upon the defendants.

11. I am persuaded that this appeal raises bona fide and weighty issues deserving of interrogation by this Court. The question whether the Deputy Registrar erred in declining to mark the suit as abated is not a peripheral issue; it strikes at the jurisdiction of the Court to proceed with the hearing of the main suit. If indeed the suit had abated, then any subsequent proceedings would be rendered a nullity. This goes to the very root of the proceedings and is therefore a serious and arguable ground of appeal.
12. In *Stanley Kangethe Kinyanjui V Tony Ketter & 5 Others*, [2013] eKLR, the Court of Appeal emphasized that an arguable appeal is not one that must necessarily succeed but one that raises at least a single bona fide issue worthy of consideration.
13. Similarly, in *Kenya Tea Growers Association V Kenya Planters & Agricultural Workers Union*, [2012] eKLR, the Court reiterated that an arguable appeal need not show overwhelming probability of success; it is sufficient if it raises a justiciable point. Applying that principle, I am satisfied that the applicants' appeal is not frivolous, vexatious, or a mere delaying tactic. On the contrary, it raises a jurisdictional question that, if resolved in their favour, would dispose of the entire proceedings. That suffices to meet the first limb for the grant of stay.
14. On the second limb, I am persuaded by the applicants' submission that unless an order of stay is granted, their appeal stands the risk of being rendered nugatory. The central question on appeal is whether the primary suit has in fact survived or whether it ought to have been marked as abated by operation of law. If the hearing of the main suit is permitted to proceed while this question remains unsettled, the very foundation of the proceedings would be in jeopardy. The applicants would find themselves compelled to defend and actively participate in a suit whose legal viability is under direct challenge before this Court. Such a course would undermine the purpose of the appeal and expose the applicants to prejudice incapable of being remedied merely by setting aside subsequent proceedings.
15. Turning to the balance of justice, I am cognizant of the respondents' undoubted entitlement to a fair and expeditious hearing under Articles 50 and 159(2)(b) of *the Constitution*. The Court's duty, however, is to strike a fair balance between the competing rights of the parties while ensuring that no party is driven unfairly from the seat of justice.
16. While it is regrettable that the respondents may have to await the outcome of the appeal, such prejudice is not irredeemable. It can be ameliorated by directing the applicants to prosecute their appeal without delay and under strict timelines. On the other hand, the prejudice to the applicants if a stay is refused would be irreparable: their appeal would be rendered hollow, and their right to defend themselves against a claim whose procedural validity is in dispute would be irretrievably compromised.
17. The Court of Appeal in *Butt V Rent Restriction Tribunal*, [1982] KLR 417 held that where there is doubt, the Court should lean in favour of preserving the substratum of an appeal, lest the appellate process itself is reduced to an exercise in futility. It is in that spirit that the balance tilts in favour of granting the stay.

## Disposition

18. Accordingly, the Notice of Motion dated 3<sup>rd</sup> February 2025 is hereby allowed on the following terms:
  - a. There shall be a stay of proceedings in the main suit, including the issuance of directions for hearing, pending the hearing and determination of the applicants' appeal.



- b. The applicants shall ensure that the appeal is filed and prosecuted expeditiously and without undue delay.
- c. Costs of this application shall abide the outcome of the appeal.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**F. MUGAMBI**

**JUDGE**

