



**Kenya Wildlife Service v Joshua (Civil Miscellaneous E125 of 2025)  
[2025] KEHC 14980 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14980 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL MISCELLANEOUS E125 OF 2025  
HM NYAGA, J  
OCTOBER 23, 2025**

**BETWEEN**

**KENYA WILDLIFE SERVICE ..... APPLICANT**

**AND**

**LAWRENCE NTURIBI JOSHUA ..... RESPONDENT**

**RULING**

1. The application before me is dated 11/09/2025 and it seeks the following orders : -
  - i. Spent
  - ii. That this Honourable court grant a Stay of execution of the Judgment and decree of Hon. H.Nyamweya (Adjudicator/Resident Magistrate) delivered on the 11<sup>th</sup> December, 2024 in SUCC No. E854/2024 Lawrence Nturibi Joshua v Kenya wildlife Service pending inter-partes hearing and determination of this application.
  - iii. That this honourable court grant a stay of execution of the Judgment and Decree of Hon. H. Nyamweya, Adjudicator/Resident Magistrate) delivered on the 11<sup>th</sup> December,2024 in SCC No. E854/2024 Lawrence Nturibi Joshua v Kenya Wildlife Service pending hearing and determination of the intended Appeal.
  - iv. That this Honourable court be pleased to stay delivery of ruling in HCC. MISC. E016 /2025 Lawrence Nturibi Joshua v Kenya wildlife services on application dated 28<sup>th</sup> February, 2025 pending hearing and determination of this application.
  - v. That this honourable court be pleased to grant the applicant leave to appeal out of time against the whole Judgment of Hon. Nyamweya (adjudicator/Resident Magistrate) delivered on 11<sup>th</sup> December, 2025 in SCC No. 854/2024 Lawrence Nturibi Joshua v Kenya Wildlife Service
  - vi. That costs of this application be in the cause.



2. The respondent obtained a judgment in Meru Small Claims Court Case No. E854 of 2024. The respondent did not appeal against the said Judgment. The trial court issued a Garnishee order nisi therein. When the matter came up for issuance of the Garnishee Order absolute, the respondent raised the issue of the order as this court issued in HCCA No. 158 of 2024, in which the court ruled that the trial court in that Lower court suit lacked jurisdiction to entertain the matter. That the matter being pleaded now are post-judgment. That the lower court directed the parties to seek directions of this court hence the application.
3. It was further stated that the Judgment of this court is HCCA E158 of 2024 cannot apply retrospectively. The respondent urged the court to give directions in the matter. The current applicant filed a replying affidavit sworn by Gideon K. Mutai, Advocate. He deponed that the precedent set in HCCA E158 of 2024 was that the Small Claims Court lacks Original jurisdiction to hear and determine claims arising from destruction of crops by wildlife, and followed the decision of the Court of Appeal in Kenya Wildlife Service v Purity Kanini (2024) KECA 1128 which was determined before the suits in the Small Claims Court were filed. It is thus argued that there is no retrospective application of the law as alleged.
4. It was further deponed that the court had ordered that all the concluded matters be mentioned before it for directions and ordered a stay of execution. For these reasons, it is argued, the application cannot proceed and the avenue for the applicant is to seek Judicial Review.
5. This court delivered a Judgment in HCCA E158 of 2024 where it found that where a party had filed a Claim before the CWCC then the subordinate court lacked Jurisdiction to entertain a subsequent suit.
6. In view of the numerous appeals that were filed revolving around the same issue, I issued the directions contained in that Judgment. It appears like the respondent used the orders in that file to seek a stay of all matters involving it. This led to my further directions of 4/9/2025, which were to the effect that the judgment in HCCA E158 of 2024 was not a blanket order.
7. Those directions are the ones that appeared to have elicited the filing of the present application dated 11/9/2025.

### **The Application**

8. The gist of the present application is that the applicant is desirous of appealing against the Judgment and decree of the Small Claims Court. The applicant avers that the Small Claims Court proceeded to hear and determine the matters and when this court gave the directions of 4<sup>th</sup> September, 2025, it chose to appeal against the said Judgment on the ground that the said court lacked jurisdiction.
9. It is argued that the appeal raises serious questions of law with a high probability of success. That the applicant is apprehensive that if stay is not granted, execution may proceed and render the intended appeal nugatory and at the risk of substantial loss to it. In response, the respondent swore an affidavit on 30<sup>th</sup> September, 2025
10. In a nutshell, the respondent states that extension of time to file an appeal is at the discretion of the court as set out in Nicholas Kiptoo Arap Korir Salat v – IEBC & 7 Others (2014) eKLR. It is argued that the applicant has not explained the delay of close to 9 months in filing an appeal, contrary to the decision of the Supreme Court in the cited case
11. It is pointed out that the applicant was granted leave to file defence in the lower court but did not do so, and the judgment was entered against it. The respondent further states that, he stands to suffer loss as the Judgment of the trial court has remained idle from December, 2024. The respondent urged the



court to adopt the Ruling delivered in MISC. APP. NO. E142 of 2024 and dismiss the application with costs. The court directed the parties to file submissions.

### **Applicant's Submissions**

12. The applicant submitted that the issues to be determined were:-
  - a. Whether the delay in filing the appeal is excusable.
  - b. Whether the intended appeal is arguable
  - c. Whether stay of execution should be granted as sought
13. In regard to the delay, the applicant submits that it was made to believe that the orders issued in HCCA E158 of 2024 had affected this suit. That it was upon the discretion of this court of 4<sup>th</sup> September, 2025 that the application was filed. This, to the applicant is a satisfactory explanation cited in support of this argument was County Government of Mombasa v Gulambos & Another (2024) KEELC 13655 (KLR).
14. The applicant further submits that the intended appeal raises the crucial question of jurisdiction of the lower court, that an arguable appeal is not necessarily one that must succeed, but one which frivolous and ought to be argued fully. Cited in support of this argument was Stanley Kangethe Kinyanjui – v – Tony Ketter & 5 Others (2013) KECA 378 (KLR)
15. On whether stay should be granted, it was submitted in the affirmative. That if the payment is done to the respondent, then the appeal, is successful, will be rendered nugatory, cited was Zephania Ngaria – v- Moses Lutemia Wamiali & Another (2016) KEHC 7075 (KLR).
16. It was further submitted that the respondent would not be in a position to refund the money paid to him if the appeal succeeds, hence the need for the orders sought.
17. The respondent reiterated the decisions in Nicholas Kiptoo Arap Korir Salat – v- IEBC & 7 Others (Supra) on the Principle to be applied in deciding whether or not to grant the application. It is argued that this matter is not related to HCCA E158 of 2024 and that case did not stop time from running, in respect to filing an appeal.
18. It is further argued that the applicant did not file any defence, so there is not arguable appeal. That the applicant cannot be heard to raise new evidence, which it did not pleaded before the trial court.
19. It was further submitted that the documents relied upon by the applicant are not properly marked and could not be considered by the court.

### **Analysis & Determination**

20. The principles to be applied in this kind of application were set out in Nicholas Kiptoo Arap Korir Salat's case (Supra) as follows: - XXXXXXXXXXXX
21. The judgment in the primary suit was delivered on 11<sup>th</sup> December, 2024. The application was filed on 11<sup>th</sup> September, 2025. The applicant has explained that it had interpreted the decision of the court in HCCA No. 158 of 2024 to mean that all matters involving the same issue were affected. That when the court issued a clarification on 4<sup>th</sup> September, 2025, they filed the application just 7 days later, on 11<sup>th</sup> September, 2025.



22. In my view, this reason is sufficient, even though it was based on an erroneous interpretation of the court's orders issued in HCCA E158 of 2024. The court notes that the primary suit herein was listed in the schedule of cases presented to the court in that file. I accept the explanation.
23. On the question of whether there is an arguable appeal, it is clear that the same is to be premised on the question of Jurisdiction. It is trite law that on question of Jurisdiction can be raised on appeal even if it was not during the hearing of the suit. To me, the appeal is arguable and not frivolous should the court order a stay and if so on what terms?
24. I have considered the matter at length. There is already a Garnishee Decree Nisi issued by the Lower Court. I am not told if the Garnishee has provided information on whether it holds sufficient funds to liquidate the decree.
25. The applicant's position is that the respondent will be unable to refund the money if it is released to him. The respondent has not filed any affidavit to rebut the averment. The court needs to strike a balance between the right of the applicant to pursue its right to appeal and those of the respondent who has a decree in his favour. Doing so, I find that it is only proper that the stay be granted but the amount secured by the Decree Nisi to remain so.
26. It is thus ordered as follows: -
  - a. Leave is granted to the applicant to file appeal out of time.
  - b. The Memorandum of Appeal to be filed and served within the next 14 days.
  - c. There shall be a stay of further execution of the decree of the Lower Court, but the Decree Nisi shall remain in force, securing the amount sought in the decree, pending further order of the court.
  - d. In default of filing the Appeal the stay orders shall lapse automatically and the Garnishee Order shall become absolute.
  - e. Costs of this application shall be borne by the applicant in any event.

**DATED, SIGNED AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**H. M. NYAGA.**

**JUDGE.**

