



**Shade Manufacturers and Hotel Ltd v Matuu & 3 others (Environment and Land Appeal E081 of 2025) [2025] KEELC 7159 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7159 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E081 OF 2025  
TW MURIGI, J  
OCTOBER 3, 2025**

**BETWEEN**

**SHADE MANUFACTURERS AND HOTEL LTD ..... APPELLANT**

**AND**

**SARAH MWERU MATUU ..... 1<sup>ST</sup> RESPONDENT**

**GRACE GACIKU ..... 2<sup>ND</sup> RESPONDENT**

**VIRGINIA WANJIRU ..... 3<sup>RD</sup> RESPONDENT**

**LOUIS WAITHERA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 13<sup>th</sup> May 2025 brought under Order 51 Rule 1, Order 42 Rule 6(2) of the Civil Procedure Rules and Section 3A of the [Civil Procedure Act](#) in which the Applicant seeks the following orders: -
  - a) Spent.
  - b) Spent.
  - c) That upon inter partes hearing, this Honourable Court be pleased to issue an order of stay of proceedings in MCRTC 5 of 2022 pending the hearing and determination of the main appeal.
  - d) Spent.
  - e) That upon inter partes hearing of this application, the Honourable court be pleased to issue a permanent order directing the Respondent to release all movable property which were unlawfully attached from the Appellant/Applicant's business premises pending the hearing and determination of the Appeal.



- f) That the Honourable court be at liberty to issue any other order in the spirit of dispensation of justice.
  - g) That the costs of this application be borne by the Respondents.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of David Gitau Thairu, sworn on even date.

### **The Applicant's Case**

3. The Applicant contends that its preliminary objection dated 5<sup>th</sup> March 2025, challenging the legality of the bill of costs taxed by the BPRT, was dismissed through a ruling delivered on 25<sup>th</sup> April 2025 on the basis that the court lacked jurisdiction to hear and determine the objection. The deponent states that the learned magistrate failed to acknowledge that she possessed the jurisdiction to decline to adopt an illegal order issued by the BPRT.
4. He further stated that the learned magistrate failed to recognize that the BPRT lacked jurisdiction to tax a bill of costs.
5. He asserted that the appeal is arguable and has overwhelming chances of success. The deponent is apprehensive that the appeal will be rendered nugatory if the orders sought are not granted.

### **The Respondent's Case**

6. The Respondents opposed the application through the replying affidavit of Lucy Waithera Muhu, alias Louis Waithera.
7. The deponent averred that prayers 3, 4, and 5 of the application cannot be raised at this point because they were not addressed in the ruling or in the preliminary objection. She further averred that the bill of costs was taxed in the presence of the Applicant, and no appeal has been filed against it.
8. According to the deponent, the instant application is orchestrated to defy paying the costs.
9. The deponent contends that the Applicant is a vexatious litigant because it has sought a stay of execution of BPRT No. 95 of 2015 in other courts, specifically in ELC No. 41 of 2017, Court of Appeal No. 207 of 2018, and in JR No. 433 of 2018. She further contended that the application is an abuse of court process and is intended to delay the execution of a debt owed to the Respondents. She also claimed that the Applicant has not provided security for costs.
10. The application was canvassed by way of written submissions, which both parties duly filed and which I have duly considered.

### **Analysis and Determination**

11. Having considered the application, the respective affidavits and the rival submissions, the issue that arises for determination is whether the proceedings in MCRT 5 of 2022 should be stayed.
12. The threshold for stay of proceedings is found in the Halsbury's Law of England 4<sup>th</sup> Edition which provides that:-

“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 impoied unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.”

13. In the case of Global Tours and Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000, the court held that:-

“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 interested of justice to order stay of execution 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 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.”

14. In the matter at hand, the Applicant is apprehensive that his appeal will be rendered nugatory if the proceedings herein are not stayed.
15. I have considered the application and the submissions by both parties and find that the Applicant has met the threshold for the grant of stay of proceedings pending appeal.
16. The upshot of the foregoing is that the application dated 13<sup>th</sup> May 2025 is allowed in the following terms:-
- a. A stay of proceedings in MCRTC 5 of 2022 is hereby issued pending the hearing and determination of the main appeal.
  - b) Costs to abide by the outcome of the appeal.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

.....

**HON. T. MURIGI**

**JUDGE**

In the presence of: -

Ruth Chege for the Respondents

Ms Okumu holding brief for Nyangito for the Appellant

