



Nyoro Construction Co Ltd v Prashanth Projects Limited & another (Civil Suit 144 of 2015) [2025] KEHC 15497 (KLR) (Commercial and Tax) (27 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 144 OF 2015
FG MUGAMBI, J
OCTOBER 27, 2025**

BETWEEN

NYORO CONSTRUCTION CO LTD PLAINTIFF

AND

PRASHANTH PROJECTS LIMITED 1ST DEFENDANT

KENYA PIPELINE CO LTD 2ND DEFENDANT

RULING

Background and Introduction

1. This court is seized of the Notice of Motion application dated 3rd June 2025, supported by the affidavit of Nelson Nyaduwa, the Acting Chief Legal Officer of the applicant, sworn on the same day. The applicant seeks a stay of these proceedings on the basis that they are aggrieved by the court's Ruling dated 14th May 2024, and have accordingly lodged an appeal at the Court of Appeal.
2. The applicant argues that the appeal is arguable with chances of success, and emphasizes that proceeding with these proceedings would render the appeal nugatory, particularly as the core issue concerns the admissibility of the respondent's documents, which is an issue of grave substantive importance.
3. The respondent opposes this application through Grounds of Opposition dated 3rd June 2025, asserting that the application was made in bad faith, and merely to delay the proceedings on the eve of the main hearing. The respondent also contends that the application is res judicata, citing no new grounds, and highlights the inordinate delay in filing the application, which undermines its bona fides. Furthermore, it is pointed out that no stay orders have been issued by the Court of Appeal, and thus



no sufficient basis exists for this court to intervene at this stage. The 1st defendant did not oppose the application.

Analysis and Determination

4. The fundamental question before this court is whether the application for stay of proceedings is merited in light of the foregoing arguments and legal principles. In exercising its discretion to grant a stay, this court is guided by a well-established principle that such discretion must be exercised cautiously, judiciously, and in the interest of justice (*Re Global Tours & Travel Ltd, HC Winding Up Cause No. 43 of 2000*).
5. As Ringera J. observed, the decision hinges on whether a stay is in the interest of justice, assessing factors such as the prima facie merits of the intended appeal and whether it is an arguable one, the need for expeditious resolution of litigation and optimal use of judicial resources and whether the application has been made expeditiously.
6. Relevant case law underscores the stringent nature of granting such orders. In *Kenya Wildlife Service V James Mutembei*, [2019] eKLR, it was emphasized that such an order is an exceptional remedy, only to be granted in exceptional circumstances, given its potential to infringe on a litigant's fundamental right to a fair, prompt hearing. The court reiterated that due regard must be paid to the right of access to justice, and that the bar for issuing stay orders is high and requires a careful balancing of interests.
7. Furthermore, the decision in *Kenya Power & Lighting Company Ltd V Esther Wanjiru Wokabi*, [2014] eKLR sets out clear criteria which is that the applicant must demonstrate a prima facie arguable appeal, that the application was filed promptly, and that it is in the interest of justice to grant the stay.
8. Applying these principles, it is not contested that the Ruling which is the subject of this application was delivered on 14th May 2024. The applicant filed their Notice of Appeal on 15th May 2025, more than a year after the impugned Ruling, and crucially, on the eve of the main hearing. Furthermore, the instant application was filed on 3rd June 2025, well over a year after the Ruling. This significant and unexplained delay strongly indicates bad faith or an attempt to frustrate the substantive proceedings, rather than a sincere and urgent pursuit of justice. Such delay also undermines the bona fides of the application and in my view, does not meet the threshold for the exercise of this court's discretion to grant a stay.
9. Additionally, the applicant's assertion that the appeal is arguable and has merit does not, in itself, justify the granting of a stay, particularly when considered alongside the prolonged and unexplained delay in lodging the appeal and application. The courts have consistently emphasized that an arguable appeal is merely one factor among many to consider when exercising discretion, and it does not automatically grant entitlement to a stay of proceedings.
10. Noting the conduct of the applicant, I would be extremely hesitant to permit any further delay in the hearing of this matter. While I acknowledge that the purpose of a stay is to prevent injustice or prejudice that could arise during the pendency of an appeal, such a remedy must be exercised judiciously and in balance with broader considerations. These include the public interest in the prompt and efficient resolution of cases, the management of judicial resources, and, most importantly, the fundamental right of all parties to timely access to justice.
11. In any case, if the applicant were to succeed on appeal after the proceedings have continued, their remedy would not be rendered futile as they would be at liberty to seek an order for the setting aside of the court's decision, or a re-trial if at all necessary.



12. It is also noteworthy that this matter has been pending unheard since 2015. The lengthy delay highlights the critical need for expeditious proceedings to bring finality to the substantive issues at hand. Allowing this application only exacerbates the prejudice already suffered by the parties and undermines the integrity of the judicial process. The courts have emphasized the importance of ensuring that justice does not become a victim of its own delays, and in this case, it is my view that the interests of swift justice overwhelmingly outweigh the applicant's assertion of a meritorious appeal.

Disposition

13. The upshot of this is that the application dated 3rd June 2025 is devoid of merit and is accordingly dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER 2025.

F. MUGAMBI

JUDGE

