

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCC NO. E012 OF 2023 (OS)**

**ALFRED  
AYORA.....PLAINTIFF/APPLICANT**

**JUMA**

**VERSUS**

**TERESIA  
DEFENDANT/RESPONDENT  
CHIEF  
DEFENDANT/RESPONDENT**

**ADHIAMBO**

**LAND**

**ODHIAMBO.....1<sup>ST</sup>**

**REGISTRAR.....2<sup>ND</sup>**

**RULING**

1. Following the delivery of the ruling in this matter on 11<sup>th</sup> November, 2025 with respect to the plaintiff/applicant's notice of motion dated 9<sup>th</sup> June, 2025, Mr. Keaton, the learned counsel for the plaintiff/applicant made an oral application pursuant to **Order 42 Rule 6** of the **Civil Procedure Rules** seeking stay of execution of the ruling and stay of proceedings pending the intended appeal.
2. On the question of whether there is an arguable appeal, the learned counsel argued that one of the grounds is whether this court had erred in dismissing the application, and whether there was fair trial. Further, that the proceedings are at an advanced stage, and that if stay is not granted, the proceedings will have been spent and judgment delivered.

3. On the issue of security, the learned counsel for the plaintiff/applicant invited the court to consider various decisions including Odunga's digest. He submitted that it is not mandatory for a litigant to furnish security for costs. He relied on the case of **Antoine Ndiaye v African Virtual University [2015] KEHC 6783 (KLR)**. The learned counsel further submitted that the application has been made without undue delay.
4. Mr. Ajak Jok, the learned counsel for the 1<sup>st</sup> defendant/respondent was opposed to the request for stay of proceedings. The learned counsel argued that there is no execution that would result from the defendants, and that the argument should be on the stay of proceedings. Further, that the plaintiff/applicant has not led any *prima facie* case on why the appeal will succeed. Further, that if the plaintiff/applicant is desirous of obtaining leave, they have to file a formal application which will be argued. It was submitted that the matter is coming up for hearing on 9<sup>th</sup> December, 2025, and that there is time to file an application. Further, that there is no ground of appeal that has been laid before this court.

5. Mr. Allan Kamau, the learned counsel for the 2<sup>nd</sup> defendant/respondent submitted that there is no basis for grant of stay as the application was dismissed. He relied on the Court of Appeal decision in **Western College of Arts and Applied Sciences Vs EP Oranga & others (1976 - 1980] eKLR**, where it was held that a dismissal order cannot form the basis for an order of stay of execution. The learned counsel submitted that the costs which could have formed the basis of the application, the court has stated that they will be in the cause, and there is nothing capable of being executed.
6. In respect of the 2<sup>nd</sup> limb for stay of proceedings, and in opposition to the same, the learned counsel relied on **Order 42 Rule 6(1)** of the **Civil Procedure Rules**. He urged the court to be guided by the decision of Ringera, J (*as he then was*) in **Re Global Tours and Travel Limited**, and submitted that no basis whatsoever has been provided.
7. In rejoinder, the learned counsel for the plaintiff/applicant submitted that the orders issued by the court is a positive order as they are barred from adducing their evidence. While reiterating his earlier submissions, the learned counsel

submitted that the Court of Appeal has held that an arguable appeal does not necessarily have to succeed. He stated that they have submitted on stay of execution of the ruling and stay of proceedings, and relied on **Section 3A** of the **Civil Procedure Act**.

8. I have considered the oral application, and the submissions made by the respective counsel. In my view, the issue for determination is *whether stay of execution and proceedings ought to issue pending the intended appeal.*

9. **Order 42, Rule 6 (1) and (2) of the Civil Procedure Rules** provides as follows:-

***“(1)No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose***

***decision the appeal is preferred may apply to the appellate court to have such order set aside.***

***(2) No order for stay of execution shall be made under subrule (1) unless—***

***(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and***

***(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”***

**10.** From the above provision of the law, it will be observed that a court may issue a stay of proceedings after an appeal has been filed though the mere filing of an appeal does not mean that the proceedings must be stayed. The same provision provides that the court must be persuaded that there is sufficient cause to do so.

**11.** The above provision of law is also clear that there are three conditions for grant of stay order pending appeal to which:-

***i. The court is satisfied that substantial loss may result to the applicant unless stay of execution is ordered;***

***ii. The application is brought without undue delay and***

***iii. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.***

**12.** The learned counsel for the plaintiff/applicant argued that the orders dismissing their application were positive to the extent that they were not allowed to adduce evidence, and that the plaintiff/applicant would suffer substantially. The learned counsel submitted that the proceedings are at an advanced stage, and that if the same is not stayed, the prayer will be spent and judgment entered. I need not restate the numerous decisions where the court has pronounced itself on orders which are negative in the instance where an application or a suit has been dismissed. In the instant case, the notice of motion dated 9<sup>th</sup> June, 2025 filed by the plaintiff/applicant was dismissed in a ruling delivered by this court on 11<sup>th</sup> November, 2025.

**13.** On whether this court should stay proceedings in this suit pending the intended appeal, Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 37 at p. 330 states:-

***“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 imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue....This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.”***

- 14.** As it can be observed, stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera, J in **Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000):-**

***“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)

15. Being dissatisfied with the ruling of this court, the plaintiff/applicant has every right to appeal against the decision of the court. In deciding whether to stay proceedings in this matter pending the intended appeal, the court has to carefully weigh the interests of both parties to ensure that one party does not suffer injustice at the expense of another. Indeed the hearing of the suit is at an advanced stage, and while the plaintiff/application feels aggrieved by the court's decision, the same does not bar this court from proceeding further with the said hearing. The plaintiff/applicant had sought to adduce evidence and by the time the ruling was delivered, he had closed his case.

16. Bearing in mind that the plaintiff/applicant had already closed his case, I find that the greater injustice would be suffered by the defendants/respondents who are keen to defend the suit. More importantly, no exceptional circumstance has been shown to enable this court put on hold the proceedings pending the intended appeal. While I note that every party has a right of appeal, the court is also called upon to ensure efficient and timely disposal of matters which includes this suit.

17. From the above, I find the oral application made on 11<sup>th</sup> November 2025, by the plaintiff/applicant without merit, and the same is hereby dismissed. Costs to be in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
19/11/2025.**

**In the presence of:**

*Mr. Benson Agunga - Court assistant  
Mr. Allan Kamau for the 2<sup>nd</sup> Defendant  
Mr. Felix Keaton for the Plaintiff  
Mr. Ajak Jok for the 2<sup>nd</sup> Defendant*