



**Chabeda v Director of Public Prosecutions (Criminal Application
E051 of 2025) [2025] KECA 1827 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1827 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E051 OF 2025
PO KIAGE, WK KORIR & AO MUCHELULE, JJA
NOVEMBER 7, 2025**

BETWEEN

PETER SAGWA CHABEDA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

*(Being an application for stay of execution pending appeal arising from
the judgment of the High Court of Kenya at Nairobi (B. Mwamuye,
J.) dated 27th March 2025 in HCCR. MISC APP. No. E383 of 2024)*

RULING

1. Before us is a notice of motion by the applicant dated 28th July 2025, wherein he seeks two main prayers, to wit, that the notice of appeal dated 3rd April 2025 be withdrawn and the one dated 20th May 2025 be deemed to have been filed within time, and an order do issue staying the proceedings in Milimani MCRCC No. 1783 of 2025 pending the hearing and determination of the intended appeal.
2. The application, which is supported by the applicant's own affidavit, is founded on the denial by B. Mwamuye, J. in the judgment delivered on 27th March 2025 of the applicant's request to stay the proceedings in Milimani MCRCC No. 1783 of 2025. On the prayer for enlargement of the time for filing the notice of appeal, the applicant averred that upon realizing that he did not sign the notice of appeal dated 3rd April 2025, he lodged the one dated 20th May 2025, albeit out of time. He deposed that the error was a bona fide mistake of his counsel and should not be visited upon him. On the request for stay of the criminal proceedings before the magistrate's court, the applicant contended that if the order is not granted, he will suffer irreparable harm, rendering his intended appeal nugatory. On the manner in which his intended appeal would be rendered nugatory, the applicant averred that there is a risk that he will be sentenced to serve a jail term, which action is irreversible. It was, therefore, his plea that the application be granted in the interest of justice.



3. The respondent did not file any response to the application.
4. At the hearing of the application, learned counsel Dr. Khaminwa appeared for the applicant alongside learned counsel Mr. Wanyanga, while Senior Assistant Director of Public Prosecution (SADPP) Mr. O.J. Omondi appeared for the respondent. While counsel for the applicant relied on the written submissions, Mr. O.J. Omondi, for the respondent, informed the Court that they were opposed to the grant of an order of stay.
5. In the submissions dated 24th October 2025 the applicant relied on the cases of Emirates Airline Ltd vs. Stephen Chase Kisaka [2015] eKLR and National Bank of Kenya Ltd vs. Leonard G. Kamweti [2015] eKLR to outline the principles underpinning the Court's exercise of discretion in granting an order of stay. Counsel contended that the intended appeal is arguable as it seeks to challenge the High Court's finding that the appellant had not established a prima facie case. Counsel further submitted that the appeal raises a question of potential violation of the applicant's right to a fair hearing. Reiterating the applicant's averment that should an order of stay be declined, the intended appeal will be rendered nugatory, counsel argued that the applicant risked being jailed if the proceedings before the magistrate's court are allowed to continue. Relying on the holding in Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 Others [2013] KECA 378 (KLR) that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible, counsel argued that no subsequent action of the Court can undo the injury the applicant will have suffered should he be sentenced to jail. On the request for extension of time for filing the notice of appeal, counsel invoked Article 159 of *the Constitution* to urge that the notice of appeal dated 20th May 2025 be admitted as duly filed.
6. We have addressed our minds to the application and the submissions by counsel. From the outset, we must point out that the applicant's prayer for enlargement of time is before the wrong forum. An application for extension of time is a single judge matter with a dissatisfied party being given an opportunity to seek a review of the decision of the single judge before a full bench. This is the essence of rule 4 as read with rules 55 and 57 of the Court of Appeal Rules. We will therefore leave the application for extension of time undetermined. Nevertheless, in order to do justice to the applicant's prayer for stay of proceedings, we will proceed based on the existence of the notice of appeal dated 3rd April 2025, which we will deem to be a proper notice only for the purposes of addressing the request for stay of the criminal proceedings before the magistrate's court.
7. We now turn to the application for an order of stay of the criminal proceedings pending before the magistrate's court. In addressing this issue, we are guided by the holding in Diana Kethi Kilonzo vs. Republic [2016] KECA 19 (KLR), where, in considering an application for an order of stay of criminal proceedings, the Court held that:

“The upshot on the issue of jurisdiction is, therefore, that under the inherent jurisdiction of this court and pending disposal of appeals from the High Court, an order of stay of proceedings can issue where it is demonstrated that the prosecution is actuated by malice and there is abuse of the court process and/or where such prosecution is instituted for an improper motive such as to harass and exert improper pressure upon the applicant. The subordinate court criminal proceedings will also be stayed if it is demonstrated that the prosecution is instituted in derogation of the applicant's constitutional rights. The jurisdiction is sparingly used and only where the justice of the matter so demands.

....



The applicant is still bound to demonstrate first that the appeal is not frivolous or that it is arguable and secondly, that if it were to succeed, the success would not be rendered nugatory unless a stay is granted. See this Court's decisions in *Reliance Bank Ltd. -v- Norlake Investments Ltd.* [2002] 1EA 227 and *Githunguri -v- Jimba Credit Corporation Ltd. & Others (No.2)* [1988] KLR 838.”

8. This being an application for stay of proceedings, the applicant is required to disclose an arguable appeal, which will be rendered nugatory should an order staying the proceedings not issue, and the appeal eventually succeeds. In order to ascertain whether the intended appeal is arguable, we have perused the annexed memorandum of appeal, which raises three grounds. We have also read the impugned ruling by the learned Judge. At this juncture, we are restrained from conclusively discussing the grounds of appeal, for the onus of determining the intended appeal lies not with us but with the bench that will eventually hear and determine the intended appeal. We are also aware that the existence of a single arguable point is sufficient to render an appeal or intended appeal arguable for purposes of an application for stay of proceedings. In the circumstances, we find the question as to whether the learned Judge properly exercised his discretion to be an arguable issue worth canvassing before the Court at the hearing of the intended appeal.
9. Regarding the nugatory aspect, the applicant contends that if an order of stay is not granted, the proceedings before the trial court will proceed, which might lead to his conviction and a jail term. In our view, such an eventuality in itself cannot be a ground that renders an appeal nugatory. If the Court were to halt every other criminal case on such grounds, then the objective of criminal trials would be lost. In *Erdemann Property Limited & 2 Others vs. Ethics and Anti-Corruption Commission & 5 Others* [2022] KECA 860 (KLR), the Court pointed out that:

“ ... It cannot be said that the criminal prosecution will be an irreversible event as the Court can set aside the findings of the trial court if the appeal is successful.

17. We also take note of the fact that the proceedings being of a criminal nature, there must be demonstration of exceptional circumstances to justify interference with the prosecution. The applicants are apprehensive that if the criminal proceedings against them proceed, they may be severely prejudiced. However, it is common ground that the court hearing the criminal proceedings has the obligation of ensuring that the applicants get a fair trial. The applicants also could appeal, should they not be satisfied with the decision of the Chief Magistrates' Court or the High Court. We find that the applicants are simply jumping the gun, as other than mere speculation, they have not demonstrated any exceptional circumstances to justify interference with the criminal prosecution.”
10. We align ourselves with the foregoing statement of the law. In the present case, the applicant has also failed to demonstrate that the prosecution is actuated by malice, that there is an abuse of the court process or that the prosecution was instituted for an improper motive. The applicant's contention that the case arose out of a civil obligation is not a basis for finding that a criminal trial cannot ensue. Regarding the apprehension that his rights will be infringed, we reiterate that the trial court is under an obligation to protect the applicant's trial rights as guaranteed under Articles 49 and 50 of *the Constitution*, and, should he be dissatisfied with the outcome of the trial, he will have an opportunity to challenge the findings on appeal. We are further guided by the views of the Court in *Michael Sistu Mwaura Kamau vs. Ethics and Anti-Corruption Commission, Public Prosecutions, Attorney General & Inspector General of the National Police Service* [2015] KECA 331 (KLR) that proceedings before a



court of law should not be stopped based on speculation or apprehension, and that an applicant must be able to point out an outright illegality or breach, or violation which does not require protracted arguments.

11. We have said enough to show that, despite being premised on an arguable appeal, the application for stay of proceedings or execution cannot succeed. The same is bound for dismissal, and it is hereby dismissed.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

P. O. KIAGE

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

