



Thuranira & another v JKM & 3others (Suing through their mother and next friend Editor Kendi Mugambi) & another (Civil Appeal E124 of 2025) [2025] KEHC 16015 (KLR) (3 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E124 OF 2025
SM GITHINJI, J
NOVEMBER 3, 2025**

BETWEEN

STEPHEN THURANIRA 1ST APPLICANT

KENNETH NYUMOO 2ND APPLICANT

AND

JKM, GMM, EKM & FMM (SUING THROUGH THEIR MOTHER AND NEXT FRIEND EDITOR KENDI MUGAMBI) 1ST RESPONDENT

DAVID MUGAMBI MITU 2ND RESPONDENT

RULING

1. For determination is the Notice of Motion dated 3/6/2025 under Order 42 Rule 6 (1) of the Civil Procedure Rules, Section 1A, 3A and 63 (e) of the *Civil Procedure Act*, seeking that:
 1. Spent
 2. Spent
 3. Pending the hearing and determination of this appeal the honourable court be pleased to stay further proceedings and execution of the ruling of 6/5/2025 in Maua CMCC No. E009 OF 2025 by Hon. E. Chesoni convicting and sentencing appellants for contempt of court orders.
 4. Costs of this application be provided for.
2. The application is predicated on the grounds that the 1st Respondent filed a children case against her husband, the 2nd Respondent, seeking maintenance and an order to pluck in the latter's land. The 1st Respondent obtained orders restraining her husband from plucking Miraa planted in the suit parcel No. Njia/Burieruri/XXXX, but the Applicants were neither enjoined in the suit nor served with



the orders. The 1st Respondent successfully cited the Applicants for contempt of court, who were cumulatively fined Ksh. 170,000, yet the Applicants have leased the 2nd Respondent's Miraa growing on the same land. This is a classical case of unfair trial, being condemned unheard, being condemned to pay a fine without a hearing, selective application of justice and injustice in itself. The parties have been hiding under the roof of the children matter and filing applications against each other to steal from those they lease their Miraa.

3. The 1st Respondent herein, EKM, swore a Replying Affidavit on 1/7/2025 in opposition to the application. She averred that the 2nd Respondent's acts of leasing the said miraa to the applicants left her with nothing to fall back on, as they depend on the same to educate and bring up the issues herein. Subsequent to the 2nd Respondent's abdication of his parental responsibilities, she filed Maua Children's case No. E009/2025 contemporaneously with an application seeking inter alia to be listed among the lessees of the said miraa for the benefit of the issues herein. On 28/2/2025, the court included her as a family member in the list of lessees and directed that the said miraa be plucked in an alternating pattern until the lessees complete their plucking periods. The said orders were served upon all the interested persons, including the Applicants herein, and unexpectedly, the Applicants violently plucked and forcefully plucked the said miraa on 4/4/2025, despite being fully aware that it was the 1st Respondent's turn to pluck the same, in a bid to frustrate her and disobey the court orders. The Applicants were duly represented by counsel on 6/3/2025 when the contempt proceedings were heard, and the 2nd Applicant undertook to purge the contempt by reimbursing the 1st Respondent the proceeds of Ksh. 170,000 they got for the sale of the unlawfully plucked miraa. Unless the application is dismissed and the Applicants directed to purge their contempt as earlier stated, the issues herein will suffer irreparably as their basic constitutional rights to education and other necessities will be curtailed to protect the interests of a few unscrupulous and greedy miraa businessmen.
4. The 2nd Respondent did not file any response.
5. The application was canvassed by way of written submissions, which were only filed by counsel for the 1st Applicant and the 1st Respondent.

Determination

6. Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows; "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."
7. In Halsbury's Law of England, 4th Edition Re-Issue, Vol. 37 page 293, it is illustrated 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 imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue. The most important ground on which the court exercises its inherent jurisdiction to stay proceedings is that of abuse of process. 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."



8. In Kenya Wildlife Service v James Mutembei [2019] KEHC 10478 (KLR), the court (F.M Gikonyo J) espoused that; “Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceeding is high and stringent.”
9. The Applicants contend that they were condemned unheard, unfairly and unjustly to pay a fine of Ksh. 170,000. In rejoinder, the Respondent sets the record straight that the said amount was not a fine per se but the proceeds from the sale of the unlawfully plucked miraa.
10. In its directions of 28/2/2025, the trial court was categorical that; “4. The defendant/respondent, his agents, assigns, leasees and/or miraa businessmen and/or anybody else claiming on his behalf or behest are restrained from plucking and/or harvesting miraa growing in the defendants land parcel No. Njia/Burieruri/XXXX, guarding the same, spraying and pruning and/or interfering with the plaintiff/applicant’s user, occupation, possession and/or enjoyment of the proceeds of all miraa growing in the aforesaid land pending the hearing and determination of this suit. 5. The defendant/respondent to pluck and/or harvest miraa growing in the defendant’s land parcel No. Njia/Burieruri/XXXX, alongside other miraa business persons/lessees in alternating patterns to enable the plaintiff/applicant cater for the maintenance, upkeep and basic needs of the issues herein to wit provision of food, school fees and school related needs, clothing, medical care, entertainment and other necessary basic need of the issues herein. 6. The miraa growing in the defendant’s land parcel No. Njia/Burieruri/XXXX, be plucked in the following alternating pattern repetitively until the lessees complete their plucking period or pending the hearing and determination of this suit:-
 1. EKM (Family).....1st plucking period
 2. IK.....2nd plucking period
 3. EKM (Family).....3rd plucking period
 4. DM.....4th plucking period
 5. EKM (Family).....5th plucking period
 6. KM.....6th plucking period
 7. EKM (Family).....7th plucking period
 8. SM.....8th plucking period”
11. David Mwenda Kanyamu, a licensed court process server, deponed at paragraphs 6 and 7 of his affidavit of service, sworn on 7/4/2025, that he had effected personal service of the court order of 28/2/2025 upon the Applicants on 5/3/2025. The Applicants’ contention that they were unaware of the aforementioned court directives is far from the truth.
12. I find that the Applicants are the architects of their own misfortunes, and they cannot validly portray themselves as victims of injustice, particularly when it has been demonstrated that they deliberately disobeyed the court orders of 28/2/2025.
13. I further find that granting the stay sought is tantamount to sanitizing the Applicants’ unlawful conduct, of plucking the miraa on a period designated for the 1st Respondent, with the intent to defeat justice.
14. Accordingly, the application dated 3/6/2025 is in want of merit and is hereby dismissed with costs to the first Respondent.



15. Temporary stay orders granted on 4/6/2025 are consequently vacated.

16. Mention for purpose of the Appeal on 16/3/2026.

DATED AND DELIVERED AT MERU THIS 3rd NOVEMBER, DAY OF 2025

S.M. GITHINJI

JUDGE

Apperances:-

Mr. Mutembei for the Applicant.

Mr. Gitonga for the Respondent (absent).

