



REPUBLIC OF KENYA



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**Mzee v Naku Modern Feeds Ltd (Miscellaneous Civil Application
E305 of 2024) [2025] KEHC 17480 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17480 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E305 OF 2024
HI ONG'UDI, J
NOVEMBER 28, 2025**

BETWEEN

AGNES WANGECI MZEE APPLICANT

AND

NAKU MODERN FEEDS LTD RESPONDENT

RULING

1. In the Notice of motion application dated 1st October 2025 the respondent/applicant prays for the following orders;
 - i. Spent.
 - ii. That this honourable court be pleased to stay proceedings herein pending the hearing and determination of the Applicants Appeal in Nakuru H.C ELC Appeal No. E064 of 2024 Between Naku Modern Feeds Ltd versus Agnes Wangeci Mzee.
 - iii. That in the alternative that there be stay of execution of the decree of this court that found the applicant guilty of contempt and/or consequential proceedings herein pending the hearing and determination of the applicant's Appeal in Nakuru H.C ELC.No. E064 OF 2024.
 - iv. That the costs of this application be provided for.
2. The said application is based on the grounds thereof and the affidavit by the respondent/applicant's director sworn on even date. He deponed that the applicant/respondent moved this Court to punish them for contempt of an order by the Business Premises Rent Tribunal (BPRT) that had purported to order her to remain on the premises despite her vacating on her own volition. That the ELC court in a ruling delivered on 24th September 2025 stayed the said order pending the hearing and determination of the Appeal.



3. He further deponed that it would be gravely unjust if he was to be punished for contempt before their Appeal in the ELC is exhausted or be taken through the motions of such contempt proceedings. That he stands to suffer substantial loss if stay is not granted pending the outcome of the lodged Appeal. Further, that the respondent will suffer no real prejudice if this application is allowed pending the hearing and determination of the Appeal.
4. The applicant/respondent in response filed a replying affidavit sworn on 12th October, 2025. She averred that following the contempt finding, the respondent/applicant's counsel made an oral plea for stay, which this court granted for thirty (30) days. That upon the lapse of that period, the respondent/applicant filed a formal application seeking an extension of the stay, which was heard and dismissed by this court on merit. Further that being dissatisfied with that ruling, the respondent/ applicant lodged an appeal before the Court of Appeal at Nakuru.
5. She averred that the applicant's proper recourse, if dissatisfied, would have been to seek for review within the time allowed. She stated that there is an active and substantive application for stay before the Court of Appeal, and entertaining the present motion would create parallel and conflicting proceedings. Further, that the stay order purportedly issued by the Environment and Land Court on 24th September 2025, in respect of the BPRT orders, was issued long after this court's finding of contempt in June 2025. Thus, this application is therefore a clear abuse of the court process
6. The applicant/respondent also filed grounds of opposition where she reiterated the averments in her replying affidavit.
7. The application was canvassed by way of written submissions. However, the applicant/respondent's counsel informed the court that they relied entirely on the replying affidavit and the grounds of opposition, and so did not file any submissions.
8. The applicant's submissions were by filed by Matiri Mburu & Chepkemboi & Company Advocates and are dated 15th October 2025. Counsel identified one issue for determination which is whether the application is merited. He submitted that it would be legally untenable for this court to be invited by the respondent/applicant to enforce a BPRT order that has been stayed by a court of equal status to this court which is mandated to hear and determine appeals from the BPRT.
9. The court's attention was drawn to the decision in *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No 43 of 2000)* the Court had this to say on the matter of stay of proceedings:

“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.....”
10. He also urged the court to be guided by the holding in the case of *Reliance Bank Lid v Norlake Investments Ltd [2002] | EA 227*, where it was held as follows;

“To refuse to grant an order of stay to the applicant would cause to it such hardships as would be out of proportion to any suffering the respondent might undergo while waiting for the applicants appeal to be heard and determined.”
11. In conclusion, he urged the court to allow their application.



Analysis and Determination

12. I have considered the application together with the affidavits and the submissions by the respondent/applicant I opine that the issue for determination is whether the applicant's application is merited.
13. In the instant application the applicant seeks for stay of proceedings herein pending the hearing and determination of the applicant's Appeal in Nakuru H.C ELC Appeal No. E064 of 2024. In the alternative, that there be stay of execution of the decree of this court that found the applicant guilty of contempt and/or consequential proceedings.
14. It is not disputed that this court in its ruling delivered on 27th March 2025 found the respondent/applicant's director guilty of contempt of the orders issued by the BPRT on 19th July 2024. Thereafter, vide the application dated 8th May 2025, he sought the following orders;
 - i. ii- Spent.
 - iii. That pending the hearing and determination of the intended appeal, this honourable court be pleased to grant an order of stay of execution and/or implementation of the ruling/order delivered on the 27th March 2025 or any consequential orders thereof and there be stay of further proceedings herein.
 - iv. That the costs of this application be provided for.
15. The said application was dismissed for being devoid of merit. Looking at the prayers sought therein, there is no doubt that the same are a replica of what the respondent/applicant seeks in the instant application. In my considered view this amount to an abuse of the court process as was held in Joseph Kimata Wachira Another v Wilson Waithaka Gitau another 2021KEELC418(KLR) where the court cited with approval the decision in Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR Justice Mativo had this to say;

“ 39. Abuse of court process creates a factual scenario where a party is pursuing the same matter by two-court process. In other words, a party by the two court process is involved in some gamble; a game of chance to get the best in the judicial process. [25]A litigant has no right to pursue paripasu two processes, which will have the same effect in two courts at the same time with a view of obtaining victory in one of the processes or in both. In several decisions of this court, I have stated that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of Court/legal process. [26] It matters not that the earlier suit was filed by the Branch of the LSK while the instant suit is filed by the main body.” (Emphasis mine)
16. It is clear that the respondent/applicant is dissatisfied with the rulings by this court dated 27th March, 2025 and 29th July, 2025. The only option was for him is to seek for review or file an appeal to challenge the rulings. An appeal having been filed in the Court of Appeal together with an application seeking stay of these proceedings, the respondent/applicant cannot come back here to seek for stay of execution. He cannot also use stay orders issued in ELC Appeal No. E064 of 2024 over four months after this court's rulings of 27th March, 2025 and 29th July, 2025 to come and apply for stay of this court's proceedings. This conduct amounts to abuse of process.



17. The upshot is that the application dated 1st October, 2025 lacks merit and is dismissed with costs.

18. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 28TH NOVEMBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

