



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**CIVIL CASE NO. E004 OF 2024**

**BETWEEN**

**JEFF MWANGI CHEGE..... APPELLANT/RESPONDENT**

**AND**

**MAHEE FLOWERS LIMITED.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**EAST AFRICAN GROWERS LIMITED.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

1. The applicants herein moved the court by way of a Notice of Motion dated the 25<sup>th</sup> of September 2025. The application is brought under sections 1A, 1B, and 3A of the Civil Procedure Act & Order 42 Rule 6(2) of the Civil Procedure Rules. They are seeking the following orders:

- a) This application be certified as urgent and service be dispensed with in the first instance.
- b) This Honourable court be pleased to order a temporary stay of proceedings in Olkalou SPM Civil case No. E045 of 2023 Jeff Mwangi Chege Vs Mahee Flowers Limited and East African Growers Limited, pending hearing and determination of this *inter partes* application.
- c) That this honourable court be pleased to order a stay of proceedings in Olkalou SPM Civil Case NO. E045 of 2023 Jeff Mwangi Chege Vs Mahee Flowers Limited and East African Growers Limited, pending hearing and determination of this application
- d) That this honourable court be pleased to order a stay of execution of its judgment delivered on 6<sup>th</sup> February, 2025, pending hearing and determination of this application.
- e) That this honourable court be pleased to order a stay of proceedings in Olkalou SPM Civil case No. E045 of 2023 Jeff Mwangi Chege Vrs Mahee Flowers

Limited and East African Growers Limited pending hearing and determination of the appeal filed in the Court of Appeal.

- f) That this Honourable court be pleased to order a stay of execution of its judgment delivered on 6<sup>th</sup> February, 2025, pending hearing and determination of the appeal filed in the court of appeal.
- g) The cost of this application be provided.

2. The application was premised on the following grounds:

- a) The applicants, being aggrieved by the decision of the Honourable Charles Kariuki delivered on 6<sup>th</sup> February, 2024, in the absence of the parties, have lodged an appeal against the said decision to the Court of Appeal, serialized as Nakuru Court of Appeal Civil Appeal No. E110 of 2025: Mahee Flowers Limited and East Africana Growers Limited Vs. Jeff Mwangi Chege.
- b) The applicants filed a notice of appeal on 25<sup>th</sup> February, 2024, immediately upon learning of the delivery of the judgment and requested a copy of the same together with the proceedings.
- c) The applicants later filed a Memorandum of appeal dated 16<sup>th</sup> June, 2025, upon receipt of the proceedings and judgment.
- d) It was this honourable court's judgment that the appeal was meritorious and dismissed the preliminary objection in the lower court and ordered the resumption of proceedings in the Senior Principal Magistrate's court.
- e) The respondent has since served the applicants with a mention notice for 29<sup>th</sup> September 2025 for pre-trial directions in the lower court despite there being a pending appeal in the Court of Appeal.
- f) The applicant's intended appeal is arguable and with a high probability of success.
- g) The applicant stands to suffer irreparable harm and damage if the order for stay of proceedings and/or execution is not granted, as the respondent may proceed with the motions of trial in the lower court despite there being a pending appeal in the court of appeal challenging the decision of this court.
- h) That if the orders are not granted, the applicants' intended appeal will be rendered nugatory and a purer academic exercise.
- i) The respondent shall not suffer any prejudice if the application is allowed.
- j) It is in the interest of justice and equity that the prayers south therein are granted.

3. The application was opposed by the respondent on the following grounds:

- a) The judgment in this matter was delivered on 6<sup>th</sup> February, 2025, and the applicant, being dissatisfied with it, filed in this court a notice of appeal dated 25<sup>th</sup> February, 2025.

- b) That the notice of appeal was the last document the appellants served until we received the application herein.
  - c) The applicant has a record of appeal much later after applying. The notice of appeal having been filed on 25<sup>th</sup> February, 2025, the applicant, appellant, had 60
  - d) days to file the record of appeal, and the period expired on or about the 26<sup>th</sup> of April 2025.
  - e) That I am very much alive to the fact that this is neither the place nor the time to delve into the merits or propriety of the appeal, but this application can only have a rightful place when made before a proper appeal is filed.
  - f) That immediately the court of appeal is seized of the matter. This court becomes functus officio and cannot delve into matters that are partly in the court of appeal and partly in the subordinate court, as the respondent herein will be at a disadvantage in that he cannot attack fatal flaws in what is considered to be an appeal, nor raise matters in the lower court.
  - g) That no leave that was obtained to file this appeal out of the strict timelines provided in law, having been filed a full 130 days from the date of judgment appealed against.
  - h) That by entertaining this application, the court would indirectly be shielding the applicant's fatal appeal when these issues could easily be raised if this application were filed in the Court of Appeal, which is now fully seized of this matter.
  - i) That clearly, we would have raised some matter earlier if we had been served with the appeal, but conveniently, the same was never served at all until we learned of the same after reviving the lower court matter by taking a mention date, which we served.
  - j) That I am not even aware of any filed certificate of delay, as the applicant may want to claim they never got certified copies of proceedings and judgment in good time, but at any rate, these are issues of the appellant court that is now seized of this matter, but not this court.
  - k) That whether the appeal is meritorious or not, is not the issue at this point as the appellant had 30 days to file a notice of appeal and 60 days to file and serve the record of appeal and having not complied with statutory provisions stated in law, the merits or lack thereof, should be seen in that light and by the court now properly in charge of this matter.
4. The present application touches on the issue of whether there is a competent appeal. This court lacks jurisdiction to decide this issue. Justice Nyarangi (JA) in the case of **Owners**

of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989] KLR 1, stated as follows:

*I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.*

5. The competence or otherwise of the appeal can only be determined by the Court of Appeal. Therefore, I decline to grant any orders and instruct the applicant to make the application in that court, as it is in a position to decide whether the appeal is properly before the court.
6. Costs shall be in the cause.

**Delivered and signed at Nyandarua, this 16<sup>th</sup> day of December 2025**

**KIARIE WAWERU KIARIE**

**JUDGE.**