



**ENO v TMD (Civil Appeal E072 of 2025)  
[2025] KEHC 19067 (KLR) (Family) (16 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19067 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY  
CIVIL APPEAL E072 OF 2025**

**CJ KENDAGOR, J  
DECEMBER 16, 2025**

**BETWEEN**

**ENO ..... APPLICANT**

**AND**

**TMD ..... RESPONDENT**

**RULING**

1. The Appellant has lodged an appeal at the High Court against the judgment delivered on 9<sup>th</sup> May, 2025 in Milimani Chief Magistrates’ *Family Court MCDC/E1013/2024*. The judgment nullified the marriage between the Appellant and the Respondent for failing to comply with Section 25 of the *Marriage Act*, which requires a written notice of not less than 21 days and not more than three months of their intention to marry to be given to the Registrar of Marriages and the celebrant.
2. The Appellant/Applicant has presently moved the Court via an application dated 30<sup>th</sup> May 2025 that seeks the following orders;
  - i. That the application be certified urgent ex parte and service of the same be dispensed with in the first instance;
  - ii. That the honourable court be pleased to grant stay of all court proceedings in any other court, including the one in Environment and Land Court Case at Nairobi Milimani Law Courts under ELCLC No. E018 of 12025 and MCCOMMSU/E1032/2024 at Milimani Commercial Law Courts between the two parties herein pending the hearing and determination on the aforementioned appeal;



- iii. That the honourable court be pleased to grant stay of execution of judgment dated 9<sup>th</sup> May, 2025 and decree dated 27<sup>th</sup> May, 2025 in any other court, including restraining the registrar of marriages from effecting registration of the outcome of the decree and judgment details in the registrar of marriages pending the hearing and determination of High Court Family Division Appeal No. HCF Appeal E072 of 2025 for purposes of justice and fairness to all parties;
- iv. That the High Court be pleased to call for the lower court file to be forwarded to it for appeal purposes;
- v. That the honourable court be pleased to grant any other order or relief it may deem fit to do so;
- vi. That costs of the application be provided for.

3. The application is opposed.

#### **The Applicant's case**

4. The Applicant argues that she requires the stay of execution and stay of proceedings in the two cases below, as the appellant intends to use the lower Court judgment in these other Court proceedings between the parties herein in the Environment and Land Court ELCLC Case No. E018/2025 and Chief Magistrates Commercial Court Case No. MCCOMMSU/E1032/2024.
5. The Applicant argues that unless the orders sought are granted, she will be greatly prejudiced and the appeal will be rendered nugatory.

#### **The Respondent's case**

6. The Respondent argues that the Applicant does not have an arguable appeal and further that she has failed to demonstrate any actual prejudice she would suffer if the orders sought were not granted.
7. The issue for determination is whether the application has met the threshold for the grant of the orders sought.

#### **Stay of proceedings**

8. To stay or not stay proceedings is a discretion on the part of the Court to be exercised judicially and on sound grounds. The Applicant has not annexed the originating processes in the two cases that she has stated between the parties. The attached pleadings do not provide much assistance regarding the prayers sought in those cases or their interrelation with the subject of the appeal.
9. Besides, the Environment and Land Court is already handling an application for a stay of proceedings in the ELCLC Case No. E018/2025. Accordingly, the ELC Court will give its own consideration to whether to stay its proceedings, and this Court will not interfere with its discretion.
10. As regards the Chief Magistrates Commercial Court Case No. MCCOMMSU/E1032/2024, no exceptional circumstances have been shown to warrant staying those proceedings.



### **Stay of execution**

11. On stay of execution, a decree of nullity is generally considered a negative order in the legal sense that it declares something did not legally happen, rather than ordering a positive action. The order that the Appellant seeks to stay is a negative order incapable of execution.
12. I find that the interests of justice in this case are best served by an order of hearing of the appeal on a priority basis. The Appellant shall file and serve the record of appeal within 30 days.
13. The application is dismissed, and the costs of the application shall await the outcome of the appeal.
14. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 16<sup>TH</sup> DAY OF DECEMBER, 2025.**

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Ms. Ngunyi holding brief for Mrs. Okulo, Advocate for Respondent

Mr. Irumba, Advocate for Appellant

