



Kazungu v Clerk, County Assembly of Taita Taveta and County Assembly of Taita Taveta & 2 others (Employment and Labour Relations Petition E005 of 2025) [2025] KEELRC 3752 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3752 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
EMPLOYMENT AND LABOUR RELATIONS PETITION E005 OF 2025
K OCHARO, J
DECEMBER 3, 2025

BETWEEN

WISDOM MWAMBURI KAZUNGU PETITIONER

AND

THE CLERK, COUNTY ASSEMBLY OF TAITA TAVETA AND COUNTY ASSEMBLY OF TAITA TAVETA & 2 OTHERS & 2 OTHERS RESPONDENT

RULING

Introduction

1. By a Notice of Motion Application dated 5th November 2025, the Respondents/Applicants seek that the proceedings herein be stayed pending the hearing and determination of an appeal, Civil Appeal No. E 072 of 2025-The County Assembly of Taita Taveta & others v Wisdom Mwamburi Kazungu, currently pending at the Court of Appeal.
2. The Petitioner has raised a preliminary objection, basing the same on the four [4] grounds set out in the Notice of Preliminary Objection dated 20th November 2025, namely;
 - i. That the Respondents had filed a similar application dated 8th May 2025, in the Court of Appeal, and therefore, the application herein is an abuse of the court process.
 - ii. That An application for stay of proceedings cannot be filed in this court while it is pending determination in the Court of Appeal.
 - iii. That under Article 50 of *the Constitution* of Kenya, 2010, disputes are supposed to be determined without undue delay. Therefore, the filing of the application for stay is an affront to the constitutional provision.



- iv. That parties have been fully heard and have even filed their final submissions, and therefore, the next step is to let the court render its determination in the matter.
3. The parties have filed their respective written submissions for and against the preliminary objection.

Petitioner's Submissions

3. The Petitioner asserts that the present Application, dated 5th November 2025, is procedurally incompetent and represents a clear abuse of the court process. The application is brought at a time when an earlier application, dated 8th May 2025 and filed in the Court of Appeal, seeking orders to stay the proceedings in this matter, is scheduled for ruling on 13th February 2025. This duplication is improper and clearly demonstrates an attempt to bypass the proper appellate process.
4. It is submitted that it is well-established law that a party should not be allowed to initiate multiple proceedings seeking identical reliefs in different courts or to hinder the course of justice. The law expects parties to act in good faith and in a manner that upholds an orderly administration of justice. Clearly, the Respondents have ignored these principles. They have abused the court process. To support this point, reliance has been placed on the case of Universal Resources International Limited v Registrar of Companies [Petition 86 of 2020] [2023] KEHC 22254[KLR].
5. Furthermore, the application violates the stipulations of Article 50[1] of *the Constitution* of Kenya, 2010, which guarantees every party the right to have disputes resolved expeditiously and without undue delay. The parties herein have already been fully heard and highlighted their submissions on the petition, meaning the matter now awaits judgment. Bringing an application too late in the day, as the Respondents have done, serves no other purpose than to delay the determination. Expeditious case disposal has constitutional underpinnings. Courts, litigants, as well as Advocates are duty bound to give the same effect. To buttress these submissions, they cite the case of INPHA Pharmaceuticals Limited v Waweru & another [2023] KEHC 25933 [KLR].
6. The Petitioner urges this court to note that in its ruling delivered on 2nd July 2025, the Court of Appeal rejected an application for a stay of the proceedings in this matter, pending the outcome of the appeal. Giving an order of stay herein, as sought, would amount to this Court overruling the Court of Appeal, a thing the hierarchical norms cannot countenance.

The Respondents' Submissions

3. The Respondents submit that the preliminary objection raised by the Petitioner does not fit within the definition obtaining in the oft-cited case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 698. The Notice of Preliminary Objection raises no points of law. The Petitioner has not cited any provision of the law that is capable of disposing of the application in limine. The application for a stay of proceedings seeks the exercise of the court's judicial discretion. A preliminary objection cannot be raised appropriately and succeed where what it aims to attack is an exercise of a Court's discretion.
4. Basing their argument on the holding in Global Tours & Travels Limited, Nairobi High Court Winding up Cause No. 43 of 2000, the Respondents state that whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of discretion to be exercised in the interest of justice.
5. It is further argued that whether an application for stay filed is an abuse of the Court process is a question of fact rather than law. It is a question that cannot be determined without the court examining



the Application filed before the Court of Appeal and what has been before the Court, along with the circumstances and overall context of the petition and the proceedings undertaken so far.

6. It is further submitted that no law prohibits a party from simultaneously applying for a stay in both the trial Court and the Court of Appeal. Indeed, the petitioner has not cited any legal provision or decided case in support of his position. Moreover, the factors considered in applications for a stay of execution pending appeal in the two forums differ significantly.
7. If the order sought is not granted, the appeal already filed shall be rendered nugatory. Judicial time is valuable and limited, and must not be squandered on proceedings that would ultimately become moot.

Analysis and determination

3. I have carefully considered the points of preliminary objection raised by the Petitioner, and the respective submissions by Counsel for the parties for and against the objection, and the following issues emerge for determination, thus;
 - a. Whether the preliminary objection raised by the Petitioner is properly raised.
 - b. Whether this Court has the requisite jurisdiction to entertain the instant application.
14. From the outset, it is imperative to point out that the Petitioner has raised two significant points, which form the foundation of his plea that the Respondent's current application be dismissed. First, the application constitutes an abuse of the court process. Second, this Court lacks the jurisdiction to entertain the application.
15. On the question of whether an objection grounded on "abuse of court process" constitutes a proper preliminary objection, the law is settled. A preliminary objection must be predicated on a pure point of law, which is capable of disposing of the matter without the court having to interrogate contested facts, as stated in *Mukisa Biscuit Co. Limited v West End Distributors* [1969] EA. In my view, allegations of abuse of the court process ordinarily require an evaluation of the parties' conduct, procedural history of the matter, or other factual circumstances. Such an inquiry inevitably calls for the ascertainment of facts or exercise of discretion, thereby falling outside the ambit of a preliminary objection.
16. However, I hasten to qualify this general principle. Where the alleged abuse is apparent on the face of the record and founded on uncontested facts and requires no factual investigation whatsoever, the ground 'abuse of the court process' can soundly be a basis of a preliminary objection. In fact, the approach is in line with the dictates of Article 159 of *the Constitution* and with this court's overriding objective. It is uncontested that the Respondents have applied for a stay of the proceedings herein before the Court of Appeal, and the Court's ruling thereon is slated for 13th February 2026.
17. Additionally, this Court recalls the parties' indication that, after their submissions on the matter, the Court of Appeal refused to grant a temporary stay of proceedings pending their ruling on the application.
18. Filing an application before a trial court, similar to one pending in the Court of Appeal, and on which the Court of Appeal has declined to grant interim relief, pending their ruling on the application on an appointed date, can be best described as an abuse of the court process. Further, it amounts to forum shopping. In the circumstances of this case, the abuse is visibly evident on record.

It requires no factual investigation whatsoever. The preliminary objection is appropriately taken. 19. The Respondents argue that an applicant is free to apply to a Superior Court under the provisions of Order 42 Rule 6 of the Civil Procedure Rules for stay orders, and concurrently approach the Court of Appeal under Rule 5 of the Court of Appeal Rules for a similar order. It is not easy to understand



what informs this line of thinking presented. Not easy, not because of its complexity, but because, to me, it defies the clear stipulations of Order 42 Rule 6, and the expected orderliness in the dispensation of justice. Order 42 Rule 6 contemplates seeking a stay order in the Court of Appeal if an application has been made under it in the Superior Court and either the application has been declined or granted with conditions that have aggrieved the applicant.

20. Assuming, for the sake of argument, that I am mistaken in the foregoing, and considering the uncontested fact that the Court of Appeal has already heard an application similar to the present one, which is currently pending a ruling, any attempt by this Court to hear and decide upon this application would constitute a violation of established hierarchical principles and would serve as an unwarranted disruption to the orderly administration of justice. Accordingly, under these circumstances, this Court lacks the jurisdiction to entertain the Respondents' application.
21. In the upshot, the Applicant's preliminary objection is sustained. The Respondents' is hereby dismissed with costs.

READ SIGNED AND DELIVERED THIS 3RD DAY OF DECEMBER 2025.

OCHARO KEBIRA

JUDGE

