



**Wekesa v Guyumba (Civil Appeal E099 of 2025)
[2025] KEHC 18905 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18905 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E099 OF 2025
E OMINDE, J
DECEMBER 19, 2025**

BETWEEN

NYONGESA BEN WEKESA APPLICANT

AND

EVANS MAGOMERE GUYUMBA RESPONDENT

RULING

1. By way of Notice of Motion dated 29th May 2025 the Applicant seeks the following orders;
 1. Spent
 2. That this honourable court be pleased to stay any further proceedings in Eldoret Civil Claim No. E016 of 2025 Nyongesa Ben Wekesa vs Evans Magomere Guyumba pending the hearing and determination of the appeal.
 3. That the costs of the application be in the cause.
2. The Application is premised on the grounds on the face of it and the averments of Counsel on record for the Applicant in the affidavit sworn in Support of the application. It is expressed to be brought under sections 3 and 3A of the *Civil Procedure Act*, Section 48(1) of the *Evidence Act*, Order 51 Rule 1 of the Civil Procedure rules, 2010, Section 30 of the *Small Claims Court Act* and ‘any other enabling provisions of the law’.
3. In his affidavit in support of the Application, Amihanda Anthony, counsel for the applicant, deponed that the Plaintiff instituted this suit vide Plaint dated 13/01/2025 and alleges to have been involved and injured in a road traffic accident that occurred on 05/06/2024 along the Eldoret -Webuye Road at Sinendet Area involving Motor Vehicle Registration Numbers KCF 660S Toyota Fielder and Motor Cycle Registration Number KMMF 826Y TVS with the motor vehicle registration number KCH 108L allegedly belonging to the Defendant.



4. After parties confirmed compliance, the matter was fixed for hearing on 30/04/2025. He annexed and marked a copy of the list of documents and witness statements marked as annexure AN-1. On the said date, they were ready to proceed for hearing at the allocated time by the court but instead of parties proceeding with the hearing, the trial magistrate compelled the Counsels to proceed by way of production of documents despite protests and objections from the Applicant's counsels thereby contravening Section 30 of the *Small Claims Court Act*.
5. The deponent averred that the Learned Magistrate/Adjudicator further misinterpreted Section 17 of the *Small Claims Court Act* by compelling counsels to proceed by way of production of documents yet the Applicant was contesting the issues of Liability and were desirous of cross-examining the Respondent's witnesses and similarly, avail their own witnesses, an action which contradicts the principles of natural justice. For these reasons, they have instituted the present seeking to set aside this ruling by the court. He annexed and marked a copy of memorandum of appeal as annexure 'AN-2'.
6. He urged that the trial court has already issued directions on submissions and a judgement date and should the same be delivered, the Appellant would have been denied the opportunity to a fair hearing and the present appeal would have been rendered moot. He urged that it is in the interest of justice that this Application be allowed as prayed.

Applicants' Submissions

7. Learned counsel submitted that this Court in exercising its discretion on whether to grant an application for stay of proceedings ought to consider special circumstances and the unique, fundamental principles/requirements as laid out under Order 42 of the Civil Procedure Rules. He cited the case of Ezekiel Mule Musembi -vs- H. Young & Company IE.A) limited [2019] eKLR on the same.
8. Counsel urged that the jurisdiction to issue orders sought is derived from of Order 42 rule 6 (1) of the Civil Procedure Rules as well as the inherent jurisdiction reserved in section 3A of the *Civil Procedure Act*. Further, that the same principles were echoed in the case of Re Global Tours & Travel Ltd HCCC No.43 of 2000.
9. Counsel submitted that the application has been brought expeditiously and without undue delay. That the initial ruling was rendered on 30/04/2025 and the Memorandum of Appeal was lodged on 20/05/2025 and the application was lodged on 30/05/2025. That the period was not inordinate as the instant application was filed within 30 days.
10. Counsel cited the case of Niazons (Kenya) Ltd vs. China Road & Bridge Corporation (Kenya) Ltd. Nairobi (Milimani HCCC 126 of 1999 on whether the appeal is arguable and submitted that the trial court ordered that the suit proceeds by way of section 30 of the *Small Claims Court Act*, that is that the documents be produced without calling the maker. It is the Applicant's contention that the said provision can only be applied where parties agree to proceed as thus, by consent. Further, the court was of the opinion that section 17 empowered the court to pen its own rules. The Applicant contends in his appeal, that the court misapprehended and/ or misapplied the said provisions, hence the questions raised in the appeal raise triable issues. Counsel urged that an arguable appeal is not one that will necessarily succeed but it's one that raises tenable positions and this appeal raises legitimate issues.
11. On Whether the Applicant's Appeal is arguable, he placed reliance on Kenya Tea Growers Association & Another vs Kenya Planters & Agricultural Workers Union Civil Appeal Nairobi No 72 of 2001 and the case of David Omwenga & John Tkeleyio in Kisii High Court No. 149 of 2005 eKLR in this regard.



12. He prayed the court allow the application as prayed

Analysis & Determination

13. Having considered the Application as well as the submissions, it is my considered opinion that the issues that arises for determination are;

- 1) whether the Trial Court misapprehended the provisions of Section 17 and 30 of the *Small Claims Court Act*.
- 2) Whether this court should grant stay of proceedings in Eldoret Small Claims Court Civil Claim No, E016 of 2025

13. Section 17 of the Act provides as follows;

Procedure of Small Claims Court

Subject to this Act and Rules, the Court shall have control of its own procedure in the determination of claims before it and, in the exercise of that control, the Court shall have regard to the principles of natural justice.

14. Section 30 on the other hand provides as follows;

Proceeding by documents only

Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions, statements or other submissions presented to the Court.

15. Sections 11 and 13 of the Small Claims Court Rules gives guidance on how the appearance of and the hearing of cases where there are witnesses is to be conducted. It is therefore envisaged that even in this courts there are instances where a matter may proceed orally. This then is the position as envisaged under Section 30 of the Act wherein the guidance is that should that be the scenario pertaining before the court, then even as under Section 17 of the Act the Adjudicator is given the power to control its own procedure, under Section 30 this power is subject to the agreement of all the parties if the court determines to proceed on the basis of documents, witness statement and submissions. It is also important to note that under the same said Section 17 it is further provided that the court in exercising the power and discretion donated to it under this section, it shall have regard to the principles of natural justice.

16. The case the subject matter of this application is a personal injury claim wherein the issue of liability is contested by the Applicant. Counsel submits that since the Applicant was contesting liability, they were desirous of cross-examining the Respondent's witnesses and similarly, avail their own witnesses, The Applicant however has not stated in his Application and submissions that a pre-trial conference was held by the court prior to the hearing of the claim and sought to know from the parties how they proposed to proceed with the hearing in light of the fact that they had not reached a consent on liability to enable the court give the appropriate directions on whether the matter was to proceed by way of oral testimony or by way of written submissions.

This in my well-considered opinion was a necessary process that the court ought to have undertaken given the nature of the claim in a bid to ensure that the ends of the justice of this particular case are met and that the basic tenents of the rules of natural justice as envisaged under Section 17 are taken into consideration and also to ensure compliance with the opening statement to Section 30 of the Act



which requires that the court seeks the agreement of all parties if it determines to proceed by way of document only. There being no indication that the same was done, then I am satisfied that the Trial Court misapprehended the provisions of Section 17 and 30 of the *Small Claims Court Act* and acted contrary to the provisions of both sections.

17. On the issue of whether the court should stay the proceedings of the Small Claims Court pending the hearing and determination of the appeal, I find the following decisions to be persuasive and I shall in this regard be guided by them. In *Global tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000 Ringera J* held as follows:

“As 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 the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

18. *F. Gikonyo J in the case of Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR*, stated as follows:

“..... what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice ...”

19. Similarly, *Halsbury’s Law of England, 4th Edition, Vol. 37 page 330 and 332* gives guidelines on the threshold to be met in Applications for stay of proceedings as follows:

“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 proceedings beyond all reasonable doubt ought not to be allowed to continue.

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. The applicant for a stay on this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

20. In addressing my mind to the above cited decisions of the courts and legal guidance as herein above summarised, and in light of my findings on the provisions of Section 17 and 30 of the *Small Claims Court Act* as already herein elucidated, I am satisfied that this is one such case, where the court is called



upon to act in the interest of justice and apply this very rare discretion that is accorded to it to apply very sparingly and only in very rare circumstances so as to ensure that the ends of justice are met.

21. In this regard, I am satisfied that the Applicant's Application has merit and the prayers sought are warranted. Consequently, I now hereby allow the Application as follows;
- a. That any further proceedings in Eldoret Civil Claim No. E016 of 2025 - Nyongesa Ben Wekesa Vs Evans Magomere Guyumba be and is now hereby stayed pending the hearing and determination of the appeal filed.
 - b. That the costs of the application be in the cause.

READ DATED AND SIGNED AT ELDORET ON 19TH DECEMBER 2025

E. OMINDE

JUDGE

