



**Debha v Owadi (Civil Appeal E715 of 2024)  
[2026] KEHC 706 (KLR) (Civ) (30 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 706 (KLR)

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

**CIVIL**

**CIVIL APPEAL E715 OF 2024**

**JN MULWA, J**

**JANUARY 30, 2026**

**BETWEEN**

**SIYAD HASSAN DEBHA ..... APPELLANT**

**AND**

**BENARD ALUOCH OWADI ..... RESPONDENT**

**RULING**

1. The Applicant by its motion dated 18<sup>th</sup> June 2025 seeks orders that pending hearing and determination of the application, the court be pleased to stay proceedings in Milimani Small Claims Suit No. E1616 of 2024 as well as in the pending appeal herein.
2. The ruling that gave rise to the appeal herein was upon dismissal of a Preliminary Objection (PO) dated 5<sup>th</sup> April, 2024. The Applicant has not anchored the application on any legal provision, but upon grounds at its face and supporting affidavit of the applicant sworn on 18<sup>th</sup> June 2024.
3. Upon a motion dated 18<sup>th</sup> June, 2024 brought under certificate of urgency, the court granted temporary orders staying progress of the suit pending determination of the motion.
4. The Applicant's grounds for the motion are that in dismissing the Preliminary Objection, whereas it sought dismissal of the suit for being statute barred under Section 4(2) of Cap 22, Laws of Kenya, the court held that it had jurisdiction to entertain the suit ignoring principles of filing a suit out of time. The impugned ruling is annexed as exhibit "SHD-1".
5. In opposition to the motion, the Respondent filed a replying affidavit by its advocate Susan Waigaki sworn on 23<sup>rd</sup> July, 2024 in which it is posited that although there was no consent judgment between the parties or dismissal; that no appeal was ever brought to its attention, nor served upon it, and that the



trial court gave sound reasons for the ruling allowing the case to proceed and therefore the application ought to be disallowed with costs.

6. Parties filed submissions. The court has considered the same.

### **Analysis and Determination**

7. The matter of stay of proceedings was laid to rest in several higher court decisions notably in Kenya Shell Limited v Benjamin Karuga Kibiru & Another (1986) eKLR; David Morton Silverstein v Atsago Chesoni (2002) eKLR and Global Tours & Travel Limited (Nairobi winding up cause No.43 of 2000) eKLR wherein it was held;-
  - a. First, there must be an appeal pending before the higher Court;
  - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
  - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
  - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
  - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances, which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and 4
  - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
8. In respect of this matter, the court is satisfied that an appeal was duly filed against the ruling of the small claims court dated 30<sup>th</sup> May, 2024 that dismissed the Applicant's Preliminary Objection, based on the provisions of Section 4 Rule 2 of Cap 22 Laws of Kenya as aforesated, an issue of the suit having been filed out of time; and without leave of court.
9. Also at issue is whether leave of court for filing suit out of time under Section 27 includes material damage claim; which the applicants deem be not the case taking guidance from the celebrated case of Mukisa Biscuits Manufacturing Co. Vs. West End Distributors Ltd (1969) EA 696 to the proposition that a court without jurisdiction does amounts to naught.
10. Whereas the Applicant insists that the small claims court did not have the requisite jurisdiction to entertain the suit out of time for material damage claims the Respondents vehemently believes that the court is clothed with jurisdiction, reason for the dismissal of the Preliminary objection on 30<sup>th</sup> May 2024. These are the issues pending for hearing and determination in the appeal.
11. It is common knowledge that around March 2025, a Civil Appellate Division was created out of the mother Division of the High Court at Milimani to handle civil appeals from the subordinate courts, tribunals and commissions those who have quasi-functional jurisdiction. This is the Civil Appellate Division of the High Court.



Thus, the role of this court – (High Court Civil Division) is to determine the motion dated 18<sup>th</sup> June 2024 file prior to the creation of the Appellate arm of the Division.

12. Without venturing into the merit or otherwise of the pending appeal; the main issue by the Applicants/ Appellants is whether proceedings in the suit before the small claims court should be stayed, the matter of jurisdiction thereof, being challenged.
13. The court is minded that stay of proceedings ought not be granted on casual grounds. The court in doing so should be convinced that stay of the proceedings is deserved upon reasonable grounds and on exceptional circumstance but not on frivolous, vexatious or harassing groundless reasons.
14. These principles are well captured in learned decisions in the cases of Kenya Wild Life Services Vs James Mutembei (2019) eKLR; Global Tours & Travel Ltd; Watu Credit v Geoffrey Mokaya & Karen Chepkurui HCCA No. E032 of 2021 among others.
15. The thread running across these decisions is that an order of stay of proceedings in a suit should be sparingly and only special circumstances be granted, as it is a right of a party to conduct its litigation expeditiously to its logical conclusion unless it is beyond reasonable doubt that the proceedings be stayed.
16. The court is minded that the issue of jurisdiction of the small claims court to entertain the suit as filed, and the dismissal of its preliminary objection on its jurisdiction is at the centre of the pending appeal.
17. It is trite that a preliminary objection on a matter of jurisdiction need be heard first, before venturing into the merits or otherwise of the suit.
18. The appeal pending for hearing and determination is premised on that very crucial issue of jurisdiction.
19. For the foregoing, I am persuaded that the Appellant’s application is merited. It is allowed in terms of Prayer number 3. Thus the interim stay of proceedings order issued by the court on 18/6/2024 is hereby confirmed; and shall remain in place up to the hearing and determination of the appeal.
20. Having rendered as above, this appeal shall be transferred to the Civil Appellate Division for hearing and determination.
21. Costs of this application shall abide outcome of the appeal.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY, 2026.**

.....  
**JANET MULWA.**  
**JUDGE**

