



REPUBLIC OF KENYA



KENYA LAW
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**Sammy v Ndambuki & 2 others (Environment and Land Appeal
E009 of 2025) [2025] KEELC 5644 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5644 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E009 OF 2025**

EO OBAGA, J

JULY 30, 2025

BETWEEN

CATHERINE NTHENYA SAMMY APPELLANT

AND

DANIEL JOHN KATO NDAMBUKI 1ST RESPONDENT

FAMILY BANK 2ND RESPONDENT

COMPLIANCE AUCTIONEERS 3RD RESPONDENT

RULING

1. This is a ruling in respect of a Notice of motion dated 27th May, 2025 in which the Appellant/Applicant seeks the following orders:
 1. That this application be certified urgent and heard *ex parte* in the first instance and service of this application be dispensed with.
 2. That this honourable court be pleased to grant a stay of the proceedings in Makueni Mcelc No. E015 Of 2024: Daniel John Kato Ndambuki –Versus- Family Bank Limited, Catherine Nthenya Sammy and Compliance Auctioneers pending the hearing and determination of this application *inter partes*.
 3. That there be a stay of any further proceedings herein pending the hearing and determination of the Appellant/Applicant’s appeal against the ruling and order delivered on 24th April, 2025 by Hon. P. Gesora in Makueni MCELc No. E015 of 2024: Daniel John Kato Ndambuiki – vs- Family Bank Limited, Catherine Nthenya Sammy and compliance Auctioneers.
 4. That the costs of this application be provided for.



2. The Applicant contends that she has filed an appeal against a ruling delivered on 24th April, 2025 by the trial magistrate in which the trial magistrate reviewed his own decision and is challenging the said decision on grounds of jurisdiction. She contends that unless stay of proceedings is granted, her appeal will be rendered nugatory as the trial court would proceed with the defective proceedings to conclusion.
3. The Applicant states that the trial magistrate committed a jurisdictional error by sitting on appeal in his own decision.
4. The Applicant's application was opposed by the Respondent based on grounds of opposition dated 18th July, 2025 where the Respondent contends that the Applicant did not seek leave to file the Memorandum of Appeal as this is an appeal from a review under Order 45 of the Civil Procedure Rules. The Respondent also contends that the Applicant has not met the threshold for stay of proceedings.
5. The application was argued orally. The Applicant submitted that the trial magistrate had upheld a preliminary objection which had been raised by the Applicant and dismissed the suit which had been filed by the Respondent. The Respondent later filed an application for review of the ruling dismissing the Respondent's suit. In a ruling delivered on 24th April, 2025, the trial magistrate allowed the Respondent's application and reviewed the ruling of 21st August, 2024.
6. The Applicant submitted that the trial magistrate having found that he had no jurisdiction to entertain the suit, he could not again review his own decision. It was submitted that the trial magistrate's decision amounted to sitting on appeal from his own decision.
7. It was submitted on behalf of the Respondent that the appeal before this court is incompetent in that there was no leave sought to file the appeal. It was submitted that an appeal from a review does not lie as a matter of right and that leave had to be sought.
8. It was further submitted that the affidavit in support of the application was sworn by an advocate who should not have done so as the issues which were raised are contested.
9. The Respondent further submitted that the Applicant had not met the threshold for grant of stay of proceedings. It was argued that stay of proceedings is a serious issue where the court can only grant the stay on certain conditions being met. The Respondent relied on the case of Nairobi Winding Up cause No. 43 of 2000 Global Tours & Travel Limited.
10. The Respondent argued that the trial magistrate reviewed his earlier ruling on grounds of sufficient cause which was demonstrated.
11. In a rejoinder, the Applicant's counsel urged the court to disregard issues which were raised in submissions but which were not contained in the grounds of opposition.
12. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the oral submissions by counsel for the parties. There are two issues which emerge for determination. The first is whether the Applicant required leave to file an appeal to this court. The second is whether the Applicant has met the threshold for grant of stay of proceedings.
13. On the first issue, the Respondent contends that leave to appeal was necessary. On the other hand, the Applicant contends that there was no leave required as the Applicant was at liberty to appeal as of right as the impugned review was under Order 45 Rule (3) of the Civil Procedure Rules.
14. Order 43 Rule (1) of the Civil Procedure Rules provides instances where the party can file an appeal arising out of an order as a matter of right. Among the orders where a party can appeal as a matter of



right is Order 45 Rule (3) which deals with review. In the instant case, the impugned ruling was a review under Order 45 Rule (3) of the Civil Procedure Rules which did not require an appellant to seek leave before filing an appeal. I therefore find that the Applicant had a right to appeal as a matter of right.

15. On the second issue, Justice Ringera (as he then was) in case of Global Tours & Travel Ltd (Supra) held as follows;

“As I understand the law, whether or not to grant 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 for stay of proceedings and if it is, 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”.

16. I have looked at the application for review which was made before the trial court by the Respondent. I have also looked at the ruling arising out of that application as well as the ruling which was under review. Applying the criteria set out in the Global Tours Ltd case (Supra), I find that this is a proper case for grant of stay of proceedings.
17. There were no contested facts raised in the Applicant’s application which would have barred the advocate from swearing an affidavit in support of the application. The supporting affidavit only touched on issues of points of law. In any case, the issue was not raised in the grounds of opposition. It was only brought up while arguing the application. I therefore find that the Applicant’s application has merit. I allow the application dated 27th May, 2025 in terms of prayers 2, 3 and 4.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF JULY, 2025.

In the presence of:

Mr. Mutuku for Appellant

Mr. Kioko for Mr. Muinde for Respondent.

Court assistant – Steve Musyoki

