Okoko v Wanyama (Family Appeal E070 of 2025)
[2026] KEHC 1385 (KLR) (6 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1385 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

FAMILY APPEAL E070 OF 2025

G MUTAI, J

FEBRUARY 6, 2026

BETWEEN

CYRIL OKOTH OKOKO ..... APPELLANT

AND

LOUISA NABWIRE WANYAMA ..... RESPONDENT

RULING

1. The issue before this court, in my view, is whether the court should be quick to grant a stay of execution pending appeal against the interlocutory decision of an inferior court. In my view, it shouldn't. This is so because the grant of such orders is invariably not in the best interest of the child, the subject of the proceedings, as a stay of proceedings prevents expeditious disposal of cases. That is a general rule, for which there are exceptions.

2. Is this appeal one such case? To answer this question, I will summarize and analyze the facts at issue. On 31st December 2025, the Hon Nelly Chepchirchir delivered a ruling that the appellant/applicant is dissatisfied with. Consequently, he filed an appeal against the said ruling. I am a not required to consider the whole of the impugned decision at this point; suffice to say that the memorandum of appeal raises 6 grounds and seeks to have the decision set aside, for this court to direct the production of the original birth certificate, preparation of a new children officer's report and for production of the minor before the trial court for an interview.

3. The appellant filed a notice of motion application dated 19th January 2026, seeking a stay of proceedings pending the hearing of the appeal. The applicant prays for this court to determine this application promptly, without delay, as the trial court is due to hear the matter on 11th February 2026.

4. The application was opposed. The respondent deposed to an affidavit sworn on 27th January 2026, in which she deposed that the application was a ploy to delay the hearing of the matter by the trial court.

She contended that the appellant does not want to take any responsibility, which he is afraid the trial court will impose on him regarding the child.

5. The respondent accused the appellant of being neglectful and of filing an application that is premature, frivolous, vexatious, and brought in bad faith to gag and intimidate the trial court. She prayed that the application be dismissed with costs and that the matter proceed to its conclusion.

6. Parties made oral submissions before me on 29th January 2026. After hearing the parties, I reserved the ruling for 6th February 2026.

7. The decision as to whether to stay proceedings of children matters is an exercise in discretion. Like all discretions, the court should make the determination based on sound policy considerations and the interests of justice and not be capricious or whimsical. The court should have at the back of its mind the paramountcy of the best interest of the child, the need for expedition in the trial process, and consider whether hearing interlocutory appeals may frustrate the trial process. In my view, the court should grant an order staying proceedings sparingly and only in the clearest of cases.

8. In Turbo Highway Eldoret Ltd v Muniu [2022] KEHC 10197 (KLR), Joel Ngugi, J, as he then was, stated as follows:

> " In short, a stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera J. in Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000):
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> '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, 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.'"

9. In the said case, his lordship went on to state that:

> " I am not persuaded, however, that the appeal will be rendered nugatory by the mere fact that the trial may proceed and a judgment on merits given. A judgment given is capable of being stayed. Whether the fact that a party had preferred an interlocutory appeal is entitled to a stay of proceedings cannot, therefore, merely be based on the fact that the Trial Court might consider what the appellant considers to be erroneous conclusions in its judgment. If the rule were otherwise, it would seriously impede proceedings in the trial Courts. This is because a party who is keen on obstructing a case from proceeding would simply prefer multiple appeals against interlocutory rulings by the Trial Court and then seek stay of proceedings in the Trial Court."

10. I agree with the learned judge. In my view, to allow this application would promote gamesmanship and render the trial in the court below impossible. Any of the parties that are keen to frustrate the hearing will contest every single decision of the learned magistrate and use this court to buttress their agenda. This court will not be used in such a manner.

11. It is clear that I have found no merit in the application. The same is dismissed. This being a children's matter, I make no orders as to costs.

12. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 6TH DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Mr Opwako, for the Appellant;

Mr Onyango, for the Respondent; and

Bancy – Court Assistant.