



REPUBLIC OF KENYA



**Step Up Holdings (K) Ltd v Family Bank Limited (Civil Case  
306 of 2011) [2026] KEHC 2096 (KLR) (18 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2096 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 306 OF 2011  
JM NANG'EA, J  
FEBRUARY 18, 2026**

**BETWEEN**

**STEP UP HOLDINGS (K) LTD ..... PLAINTIFF**

**AND**

**FAMILY BANK LIMITED ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 23/7/2025 the Defendant bank craves the following orders;
  1. Spent
  2. Spent
  3. That proceedings in this suit be stayed pending the hearing and determination of Nakuru Hccc No. 245 Of 2011, Step Up Holdings (k) Ltd V. Mt. Kenya University.
  4. That the costs of this application do abide the outcome of the suit.
2. The Application is supported by affidavit evidence of the Defendant Assistant Manager - Legal Services (Joan Gachomba). She avers that the dispute between the parties arises from a Memorandum of Understanding between Mt. Kenya University and the Plaintiff Company pursuant to which the Defendant opened an account for the Plaintiff in the name of "Mount Kenya University Nakuru Campus."
3. The Plaintiff is said to have operated the account until September 2011 when "the true account holder", Mount Kenya University, complained about unauthorised use and operation of the account. Following the complaint, the Defendant froze all concerned accounts of the University to prevent further unauthorised transaction thereon, pending resolution of the dispute between the University and the Plaintiff.



4. According to the witness another dispute arising from the same Memorandum of Understanding (MoU) led the Plaintiff to institute another civil suit being Nakuru HCCC No. 245 of 2011 against Mount Kenya University. It is averred that both suits pertain to alleged breach of the MoU and operation of the accounts in question.
5. The Defendant thinks that if the present suit is allowed to proceed before determination of Nakuru HCCC No. 245 of 2011, there will be a risk of inconsistent awards and potential miscarriage of justice. The Defendant's witness avers that stay of proceedings in the instant suit is therefore necessary since Nakuru HCCC No. 245 of 2011 will substantially resolve the matters in issue in this suit.
6. For the stated reasons inter alia the Defendant prays for stay of proceedings herein.
7. The Chairman of the Plaintiff's Board of Directors (Bernard G. Mwarania) swore an affidavit in reply opposing the Application. He denies execution of any MoU dated 21/7/2009 between them and Mount Kenya University. According to the witness, the only MoU entered into between them and Mount Kenya University is the one dated 1/9/2008 said to be exhibited in the defendant's affidavit in support of this Application. It is however, confirmed that the Plaintiff has asked the Defendant to open certain accounts in the name of Mount Kenya University Nakuru Campus.
8. The Plaintiff's witness further deposed that the dispute as to operation of the accounts in question was the subject of another suit (Nakuru HCCC No. 201 of 2012 Family Bank Limited vs Bernard Gikundi Mwarania & 5 Others) where Mt. Kenya University is an Interested Party. The court is said to have dismissed the Defendant's suit and in particular found that proceeds in the accounts in issue belonged to the Plaintiff herein.
9. According to the Plaintiff, none of the issues falling for determination herein arise in Civil Case Number 245 of 2011. The Court is told that, in any event, were Civil Case Number 245 of 2011 also pending before this court to be determined earlier the court would be cognizant of its decision therein while considering the instant claim.
10. The Plaintiff is therefore opposed to stay of proceedings herein for the stated reasons inter alia. It is also pointed out that the Plaintiff is not a party to HCCC No. 245 of 2011 and if the Application is allowed further delay in determination of this long outstanding suit would result.
11. Learned Counsel for the parties filed written submissions which I have perused against the rival affidavit evidence and the record. The issue for determination is whether stay of proceedings herein is warranted in the obtaining circumstances. As held in *Makena vs Nalwa* (2024) KEHC 13086 (Kisumu, Aburili J) cited and relied upon by the Defendant;

“the power of stay proceedings must be exercised sparingly and only in exceptional circumstances, particularly where continuation would be vexatious and manifestly groundless. According to the Defence Counsel there is a real and substantial identity or overlap in the two suits such that concurrent adjudication would jeopardise finality or produce conflicting judgements. It is argued that the legal question common to the two suits under reference is authority under the MoU as well as the consequent effect of ownership and operation of the accounts in question.”
12. In *Re Global Tours & Travels Limited* (Winding up Cause No. 43 of 2000) [2000] eKLR also referred to in the Defendant's submissions, it was observed that the relief of stay of proceedings is granted where the proceedings, if allowed to continue would render the outcome nugatory or occasion injustice.



13. On their part, the Plaintiff's submissions reiterate its position as per the affidavit in support of the Application before the court. Citing Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol 37 Pages 330 and 332, the Plaintiffs' Advocates impress upon the court that stay of proceedings is serious interruption of the court proceedings that should not be allowed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.
14. In Mariot Africa International Limited vs Margaret Nyakinyua Marugu & 4 Others, CA No. Nai E152 of 2022 further relied upon by the Plaintiff, ought to be genuine and compelling grounds to justify stay proceedings because of its effect of delaying conclusion of a case contrary to the constitutional requirement of expeditious disposal of cases.
15. I have considered the rival arguments. Both this suit and the related civil suit number 245 of 2011 are before this court. The Defendant in the latter suit (Mount Kenya University) is not party to the instant suit. It is undisputed that matters in contention in the two cases are similar.
16. Since it is the same court that is seized of the two suits, the question of conflicting judgements would not arise. Determination of one of the matters may, however, influence prosecution of the other suit by narrowing the issues in contention. It is therefore unnecessary to order stay of proceedings herein as prayed. Perhaps the parties may instead consider consolidating the two matters for better prosecution and final determination.
17. The Application is dismissed and the costs therefore shall be in the Cause.

**RULING DELIVERED THIS 18<sup>TH</sup> DAY OF FEBRUARY, 2026 IN THE PRESENCE OF:**

**J. M. NANG'EA, JUDGE.**

Plaintiff's Advocate, Mr. Ratemo

Defendant's Advocate, Absent

The Court Assistant, Jeniffer.

