



**JGO v DNK (Family Appeal E001 of 2026)
[2026] KEHC 2676 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY APPEAL E001 OF 2026
G MUTAI, J
FEBRUARY 27, 2026**

BETWEEN

JGO APPELLANT

AND

DNK RESPONDENT

RULING

1. The parties hereto are spouses currently engaged in a divorce proceeding at the Chief Magistrate’s Court, in Mombasa, to wit, Divorce Cause No E176 of 2025.
2. Vide application dated 22nd December 2025, the appellant sought to have the divorce cause referred to court-annexed mediation on the ground that the marital relationship between the parties could still be revived. Upon considering the matter, the court below declined to certify the application as urgent and to issue interim orders on the ground that the issue raised therein had previously been determined. The appellant contends that the learned magistrate erred in doing so by failing to pay sufficient heed to Article 159 2 (c) of *the Constitution* of Kenya, 2010, which promotes mediation as a dispute resolution mechanism, in appearing to make a definitive finding at an interlocutory stage, and by seemingly fragmenting the dispute between the parties rather than holistically hearing them.
3. Being aggrieved, the appellant appealed to this court. The memorandum of appeal is dated 2nd January 2026. Subsequently, he filed the notice of motion application dated 16th January 2026, vide which he seeks to stay proceedings in the court below, firstly, pending the interpartes hearing of the application, and secondly, pending the hearing and determination of the appeal.
4. The application is opposed. The respondent, DNK, made a deposition dated 23rd February 2026, opposing the application. The respondent deprecated the conduct of the appellant and averred solemnly that he was engaged in acts of bullying. The respondent was categorical that it was unlikely that mediation would be successful, given how bad the relationship between the parties was. DNK



annexed screenshots of social media posts allegedly made on behalf of the appellant by bloggers. She contended that the application was a ruse to control and manipulate her.

5. The application was argued before me on 25th February 2026. The submissions of the parties, in essence, mirror their sworn depositions. That being the case, I will not rehash them here.
6. I have read the application and the supporting affidavit as well as the response filed by the respondent. The sole issue, as far as I can tell, is whether a case has been made for issuance of an order staying proceedings in the court below pending the hearing and determination of the appeal. The court notes at the outset that the impugned decision was made in the exercise of a discretion by the court below.
7. In the case of *Mbogo & another v Shah* (1968) EA 93, the Court stated that:

“... this court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted, or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

8. It is trite law that a stay of proceedings is an extraordinary remedy that is sparingly granted, and when allowed, it is for very cogent reasons. The reason for this is that our Constitution calls on courts, as a primary principle of our judicial system, to administer justice without delay. Staying proceedings has the opposite effect.

9. In the case of *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR), it was stated that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay, and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent. See Ringera J in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*, persuasively stated thus;

“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.”

10. A 5-judge bench of the High Court considered the principles applicable when considering an application for stay of proceedings pending appeal in the case of *William Odhiambo Ramogi & 2 others v the Hon Attorney General & 3 others* [2019] eKLR. The Court held that an applicant must demonstrate that there is:

- a. A pending appeal;



- b. That there is a pending appeal before the higher court;
 - c. Demonstrate that the appeal raises substantive questions of law to be determined or is otherwise arguable;
 - d. Show that the appeal would be rendered nugatory if a stay is not granted;
 - e. Demonstrate exceptional circumstances calling for the grant of a stay of proceedings as opposed to the matter proceedings; and
 - f. That the application was filed with a delay.
11. There is an appeal before this court. This application has been filed without undue delay before the High Court sitting as an appellate court. Having so stated, I am not convinced that the appeal raises substantial questions of law or that it is otherwise arguable. I state the foregoing based on prima facie observation, noting that the court may reach a different conclusion upon hearing the appeal on the merits.
 12. The appeal is against the exercise of discretion by the learned magistrate in refusing to certify the matter urgent and to refer the cause to mediation. There is nothing extraordinary in this case; in my view, it would be better to have the matter in the court below proceed to a hearing rather than the same being stayed.
 13. In the case of Turbo Highway Eldoret Ltd v Muniu [2022] KEHC 10197 (KLR). J Ngugi, J, as he then was, stated as follows;

“All these factors must be considered, in a given case, in the spirit concisely expressed in Halsbury’s Laws of England, 4th Edition, Vol. 37 at p. 330:

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 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 not 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 this case.”
 14. As already stated, there are no exceptional circumstances in this matter. Staying proceedings will prolong litigation needlessly and won’t be in the interests of justice nor of the parties who will endure the emotional trauma of a long, drawn-out, and contested litigation.
 15. Whereas *the Constitution* indeed promotes mediation as urged by the appellant, it is also the case that it calls for justice to be administered without undue delay. It must be borne in mind, in any case, that mediation is a consensual process that both parties must believe in.
 16. The upshot of the foregoing is that the application dated 16th January 2026 is wholly without merit. The same is dismissed. I make no orders as to costs, as this is a matter between spouses. Costs will exacerbate, rather than promote cordiality.
 17. It is so ordered.



DATED AND SIGNED IN MOMBASA, THIS 27TH DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Mr. JGO (Pro se litigant);

Mr. Kamanzi, holding brief for Mrs. Oluoch-Wambi, for the Respondent;

Hamisi – Court Assistant.

