



REPUBLIC OF KENYA



**Usomi Limited & another v Mutinda (Civil Appeal E1193 of 2024)
[2026] KEHC 2415 (KLR) (Civ) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2415 (KLR)

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

CIVIL

CIVIL APPEAL E1193 OF 2024

AC MRIMA, J

FEBRUARY 27, 2026

BETWEEN

USOMI LIMITED 1ST APPLICANT

FIDALIS MUJIBI (DENNIS) 2ND APPLICANT

AND

JAMES MUTINDA RESPONDENT

RULING

1. This ruling is in respect of the Applicant's Notice of Motion dated 16th September 2025 seeking orders of stay of the proceedings in Nairobi [Milimani] SCCCOMM No. E3901 of 2024 (hereinafter referred to as 'the suit') pending the hearing and determination of the instant appeal.
2. The application is hinged on the grounds that the instant appeal is on the wrongful joinder of the 2nd Applicant herein as a Defendant in the suit and should the proceedings in the trial Court proceed, then there is a risk of having parallel decisions from this Court and the trial Court. Additionally, the Applicants averred that they made a similar application before the trial Court but the same was dismissed.
3. The Respondent is opposed to the application. He filed Ground of opposition dated 2nd October 2025 and a further Grounds of Opposition dated 6th October 2025. The Respondent argued that the Applicants have not met the threshold for stay of proceedings. Further, he contended that this application is res-judicata, having been determined by the trial Court and the same having been dismissed. Further, he argued that the instant appeal is on the ruling delivered by the trial Court where the Court declined to strike out the 2nd Applicant from the suit and not against the trial Court's ruling which declined to stay its proceedings. The Respondent faulted the Applicants for filing



numerous applications to frustrate the prosecution of the suit and therefore urged this Court to dismiss application with costs for being an abuse of the Court process.

4. The application was canvassed by way of written submissions. Parties duly complied and referred to several decisions in support of their rival positions.
5. The issue, therefore, that stands out for this Court's determination is whether the Applicants have met the threshold for stay of proceedings. The invocation of the discretionary power of this Court to grant stay of proceedings has to be exercised judiciously, cautiously and in the interest of justice given that expeditious disposal of disputes is a right of every party. This was indeed the holding of the Court in *Kenya Wildlife Service vs. James Mutembei* [2019] eKLR when it held that an order of stay is an exceptional remedy, only to be granted in exceptional circumstances, given its potential to infringe on a litigant's fundamental right to a fair and prompt hearing. The Court was emphatic that the right of access to justice must be duly regarded and that the bar for issuing stay orders is high and requires a careful balancing of interests.
6. In *Re Global Tours & Travel Ltd, HC Winding Up Cause No. 43 of 2000*), the High Court held as follows: -

.... 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...

7. Further the Court of Appeal in *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] KECA 94 (KLR) and *David Morton Silverstein v. Atsango Chesoni* [2000] KECA 287 (KLR) set out the following principles that should guide Courts in applications seeking to stay proceedings: -
 - (1) If there is a pending appeal in the higher court.
 - (2) The Applicant should explain why a stay has not been sought in the higher court since the policy is to move to the said court, which is better placed to calibrate its orders.
 - (3) There must be a demonstration that the appeal raises substantial questions to be determined or is otherwise arguable.
 - (4) There must be a demonstration of the appeal being rendered nugatory.
 - (5) Exceptional circumstances must be demonstrated which make the stay of proceedings warranted as opposed to hearing the case concluded safely and all arising grievances taken up on a single appeal.
 - (6) The Applicant must demonstrate that the application was filed expeditiously and without delay.
8. Returning to the matter at hand, the application which sought to strike out the 2nd Applicant from the suit was delivered on 18th September 2024. The appeal was filed sometimes in October 2024 and



the instant application was filed on 16th September 2025. Therefore, the application was filed one year later. From the record, there is no justification whatsoever by the Applicants as to why there was such an inordinate delay in filing the instant application.

9. There is also the issue of which ruling was appealed against to this Court. The Memorandum of Appeal dated 17th October 2024 challenges the trial Court's ruling dated 18th September 2024 which related to the dismissal of an application for stay of proceedings. It, hence, appears that the ruling dated 27th May 2024 which declined to strike out the 2nd Applicant herein from the suit may not have been appealed against. As such, there may be some variance between the appeal and the grounds in support.
10. Guided by the foregoing alongside the settled legal principles as enumerated in the above cited cases and coupled with the rate at which matters move expeditiously before the Small Claims Court, it is this Court's considered view that granting the orders sought may not be the best way forward in this matter.
11. This Court is, therefore, persuaded that the Applicants have not made a case to warrant grant of stay of proceedings in the suit and as such, the following final orders do hereby issue: -
 - (a) The Notice of Motion dated 16th September 2025 is accordingly dismissed.
 - (b) Costs of the application in the cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Ambala, Learned Counsel for the Applicants.

Ms Luchemo, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

