

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. E1009 OF 2025**

**INTERNATIONAL AIRLINES GROUP .....  
APPELLANT/APPLICANT**

**VERSUS**

**RACECOURSE CHIMOLI LUVONGA ..... 1ST  
RESPONDENT**

**DCIO JKIA ..... 2ND  
RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 3RD  
RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 4TH  
RESPONDENT**

***(Being an Appeal from the ruling of Hon. L.A. Muraqaba  
(PM) delivered on 1<sup>st</sup> October 2025 in Milimani CMCC  
6157 of 2019)***

**R U L I N G**

**Background**

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1. The 1<sup>st</sup> Respondent, who was the Plaintiff before the lower court, filed CMCC No. 6157 of 2019 against the Appellant/Applicant herein, International Airlines Group (IAG), and the rest of the Respondents alleging malicious prosecution arising from her arrest by the Applicant's employees some time in 2010.
2. Summons to enter appearance were allegedly served on the Applicant in 2024, and interlocutory judgment was entered on 29th May 2024.
3. The Applicant later challenged service of the re-hearing notice of 19th March 2025. In a ruling delivered on 1<sup>st</sup> October 2025, the trial court noted that service of summons had never been challenged but the Applicant was granted leave to defend the suit as it raised triable issues. The trial court urged the parties to fast-track the matter owing to the 1<sup>st</sup> Respondent's medical condition. The said court also ordered that the deposited security remains intact pending trial.
4. The Applicant however filed the present appeal challenging the trial court's jurisdiction. Concurrently with the appeal, the Applicant filed the application dated 6<sup>th</sup> October 2025 that is the subject of this ruling.

### **The Application**

5. Through the application dated 6<sup>th</sup> October 2025, the Applicant principally seeks orders for stay of proceedings in Milimani CMCC No. 6157 of 2019 pending the hearing and determination of the appeal.

6. The application is supported by the affidavit of the Applicant's employee, **Ms. Sarah Clements**, and is based on the grounds that the trial court lacked jurisdiction to hear the suit against the Applicant, being a foreign company domiciled in Spain. The Applicant stated that service of summons was not properly effected in accordance with Order 5 of the Civil Procedure Rules and that the appeal raises prima facie arguable issues. The Applicant added that it stands to suffer substantial loss unless the stay sought is granted.
7. The 1st Respondent, **Racecourse Chimoli Luvonga**, opposed the application through a replying affidavit sworn on 29th October 2025 wherein she avers that the application is frivolous, incompetent, and aimed at delaying justice.
8. She states that the Applicant ceased to be an aggrieved party and lacks locus standi to mount the present appeal under Section 75 of the Civil Procedure Act since the impugned ruling granted it leave to file a defence.
9. On the alleged lack of proper service and jurisdiction, the 1<sup>st</sup> Respondent averred that Service of Summons to Enter Appearance was effected on the Appellant on 19th August 2019 after which an affidavit of service dated 27th May 2024 was filed. She maintained that since the Appellant did not challenge service of the initial summons and only contested service of the re-hearing notice dated 28th February 2025, the trial court correctly held that the Appellant had not disputed service of the summons and

hence jurisdiction had been properly invoked. It was the 1<sup>st</sup> Respondent's case that the Appellant therefore conceded to the jurisdiction of the court by failing to challenge service of summons to enter appearance.

10. The 1st Respondent faults the Appellant for lack of good faith by denying knowledge of having initiated the criminal complaint despite evidence showing involvement, filing a defence only after years of inactivity, using the appeal to delay justice and seeking to distance itself from British Airways while the two entities acted jointly at the material time.
11. The Respondent contends that the Appellant's conduct shows lack of good faith and adds that the trial court properly exercised its discretion.
12. The Respondent avers that she suffered brain and spinal injuries **as a** result of the 2010 ordeal and continues to incur medical expenses costs. She adds that she has endured 15 years of continuous hardship due to the prolonged litigation and that the delay in disposing of the suit greatly prejudices her while the Appellant will not suffer prejudice because it already obtained leave to defend the suit. The Respondent notes that since security remains deposited in a joint interest-earning account, no execution can issue until the trial is concluded and hence the Appellant will not suffer any loss.
- 13.** The appeal was canvassed by way of written submissions which I have considered. Having considered the application

and submissions, I find that the main issue for determination is whether application is merited.

14. On the trial court's jurisdiction, over the Appellant, the Appellant contended that it is a foreign company domiciled in Spain and that no leave was sought to effect service out of jurisdiction as required by Order 5 Rule 21. Reliance was placed on the decision in ***Raytheon Aircraft Corporation vs. Air Al-Farat Ltd [2005] eKLR***, where the Court of Appeal held that the High Court assumes jurisdiction over persons outside Kenya by granting leave and only after such summons are served in accordance with Order 5 Rule 21.
15. The Appellant submitted that service, by email to British Airways Plc, (its alleged subsidiary) without leave did not meet the strict statutory requirements.
16. The the 1st Respondent, on the other hand, submitted that summons to enter appearance were personally served on the Appellant on 19th August 2019 as shown in the affidavit of service dated 27th May 2024 which service the Appellant never challenged at any time as it only contested service of the re-hearing notice. It was the 1<sup>st</sup> Respondent's case that where service is not challenged, the court is entitled to deem it proper.
17. In ***Evergreen Marine (Singapore) PTE Ltd vs. Petra Development Services Ltd [2016] eKLR***, the Court of Appeal considered the issue of service of summons and held that: -

***“...the entering of appearance or filing of a defence under protest... are all legitimate means of challenging the jurisdiction of the court.”***

18. In this case, I note that the trial court considered the Appellant’s objections to service and found that the challenge was limited to the re-hearing notice, not service of summons. That finding has not been shown to be patently erroneous at this stage. I find that while the jurisdictional issue is arguable, it is not clear cut enough to warrant an automatic arrest of the trial court’s proceedings.
19. On whether the application meets the threshold for stay of proceedings, I am alive to the principles governing the same, which are well settled. It is trite that Stay of proceedings is discretionary and may only be granted in exceptional and the clearest of cases.
- 20. In *Global Tours & Travel Ltd (2000)* it was held that: -**  
***“Whether or not to grant a stay of proceedings is a matter of judicial discretion to be exercised in the interests of justice... The sole question is whether sufficient cause has been shown... The test is whether the applicant has demonstrated that it is in the interests of justice to halt proceedings.”***
21. In an application for stay of proceedings, as a grave and exceptional remedy, the court considers key issues, namely; the prospects of the appeal, whether the applicant

will be prejudiced, whether the respondent will be hindered and the optimal use of judicial time.

(See ***Macharia vs. Maina & Maina Advocates [2023] KECA 1472*** and ***Meta Platforms Inc vs. Motaung [2023] KECA 996***).

22. In ***Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others [2013] eKLR*** the court considered what constitutes an arguable appeal and held that: -

***“An arguable appeal is not one which must succeed but one that raises a bona fide issue deserving consideration.”***

23. In the instant case, the Applicant argued that the appeal raises at least one arguable issue regarding whether proper service was effected upon a foreign defendant and, by extension, whether the trial court erred in assuming jurisdiction.
24. I find that the Applicant's argument satisfies the requirement for a prima facie arguable appeal. However, on whether the appeal will be rendered nugatory unless stay of proceedings is granted, I find to the negative as the decretal sum is already secured in a joint account and that no execution can issue. In this regard, the Respondent's financial status is not a critical or relevant consideration as there is no risk of loss whichever way the case eventually ends. (See ***Equity Bank vs. West Link Mbo Ltd (2013) eKLR***):.

25. On the aspect of substantial Loss the Appellant argued that it will suffer by being subjected to proceedings before a court lacking jurisdiction.
26. The Respondent, on her part, argued that she has suffered for 15 years while the Appellant already has leave to defend the suit and will thus not suffer any prejudice whatsoever.
27. In ***Kenya Power & Lighting Co Ltd vs. Esther Wanjiru*** [2020] eKLR it was held that: -

***“Substantial loss must be real, demonstrated, and cannot be speculative.”***

28. The applicant was therefore required to prove definite harm, not mere inconvenience. Substantial loss occurs where proceedings are a nullity if they continue before jurisdiction is established, irreparable harm not compensable by damages and prejudice from being forced into a defective or illegal trial process
29. In the circumstances of this case, this court is persuaded that the risk of nullity if the appeal succeeds is real but not substantial loss in the context of stay of proceedings, as the appeal can still be heard concurrently. The court notes that the Respondent has demonstrated ongoing prejudice, including medical hardship. I therefore find that the application does not satisfy the limb of substantial loss.
30. It is my further finding that the balance of convenience tilts strongly in favour of proceeding with the trial as the 1<sup>st</sup> Respondent faces medical challenges coupled with

prolonged litigation and the need for closure. It is my view that the Appellant can still prosecute its appeal while defending the suit at trial. I am guided by Article 159(2)(b) of the Constitution on expeditious disposal of cases. In ***Macharia vs. Maina & Maina Advocates*** (supra) it was held that courts must weigh each party's interests which include the age and nature of the case, prejudice to the Respondent from further delay, whether the Applicant has been indolent and public interest and constitutional timelines.

31. For the reasons stated in this ruling, I find that while the appeal raises a legitimate issue, the stringent test for stay of proceedings has not been met. Proceedings in the lower court can still continue without rendering the appeal nugatory, and no substantial loss has been demonstrated. Accordingly, I make the following final orders: -

***a) The Notice of Motion dated 6th October 2025 is hereby dismissed.***

***b) The trial in CMCC No. 6157 of 2019 shall proceed on priority basis as earlier directed.***

***c) The security held in the joint account shall remain intact pending determination of the suit.***

***d) Costs of the application shall be borne by the Appellant.***

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JANUARY, 2026.**

**HON. W. A. OKWANY**

**JUDGE**

**22/01/2026**

**FOR APPELLANT .....**

**FOR THE RESPONDENT .....**

**COURT ASSISTANT Uber**

ORIGINAL