



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRA/E049/2025

BONFACE MBUGUA KINYANJUI VS THE REPUBLIC AND FREDRICK KILONZO AND 3 OTHERS

RULING

### THE PRAYERS

1. The Notice of Motion dated 27th May 2025 filed by the appellant herein seeks orders:
  - i. Spent
  - ii. Spent
  - iii. That pending the hearing and determination of this appeal, there be a stay of further proceedings in Criminal Case No. MCCC/E894 of 2023, Mombasa.
2. The application is supported by the affidavit of Bonface Mbugua Kinyanjui sworn on 17th May 2025 and by written submissions filed in support.
3. The 2nd, 3rd, and 4th Respondents filed a replying affidavit sworn by Sheila Imali Limisi on 31st July 2025 opposing the application. Both parties filed written submissions which have been considered.

### Background

4. The appellant's complaint arises from misc. criminal application No. E654/2024 Mombasa, which was dismissed. He alleges that the 2nd and 3rd respondents, employees of Momentum Credit Ltd, fraudulently transferred ownership of his motor vehicles, registration numbers KCY606H and KCU059W, instead of assisting Margaret Mwende Wambua in acquiring the vehicles through a loan facility.
5. The respondents contend that Margaret Mwende Wambua was granted a principal loan of Ksh. 1,630,000/- and an insurance premium of Ksh. 160,760/- by Momentum Credit Ltd, to be secured by KCU059W. The loan fell into arrears, and the collateral became due for repossession.
6. The 2nd and 3rd respondents, acting in their official capacity, received the logbooks to facilitate registration of KCU059W jointly in the name of Margaret Mwende Wambua and Momentum Credit



Ltd. Following the appellant's complaint to DCIO Mombasa, investigations were conducted, and the ODPP recommended the arrest and prosecution of Margaret Mwende Wambua, who was charged under Mombasa Criminal Case No. E894 of 2023.

## Arguments

### Appellant's Submissions

7. The appellant submits that:

- a) There is a prima facie case of fraud against the respondents, and if the trial in Case No. E894/2023 proceeds, it may prejudice his intended appeal.
- b) Continuing the trial without a stay may render this appeal nugatory, as the matters in the appeal directly relate to the subject matter of the criminal case.
- c) Granting the stay serves the public interest, ensuring that justice is fully done regarding the transactions and alleged fraudulent transfer of the vehicles.

### Respondents' Submissions

8. The respondents argue that:

- a) The appeal is frivolous and lacks a substantial point of law likely to succeed.
- b) The appellant has not shown irreparable prejudice if the trial proceeds.
- c) Mombasa Criminal Case No. E894/2023 is before a competent judicial officer, and due process is being followed.
- d) The dispute is primarily between private parties, and granting a stay is not in the public interest.

### Legal Principles

9. The guiding principles for granting a stay of proceedings in criminal matters are:

- a) The applicant must demonstrate a strong prima facie case on appeal, with a real likelihood of success (not merely arguable).
- b) The applicant must show that irreparable prejudice will result if the stay is denied, such that even if the appeal succeeds, it would be rendered nugatory.
- c) The grant of a stay must not undermine public confidence or the administration of justice.

10. This higher standard of proof has been established in the following cases:

• **Ambetsa v Director of Public Prosecutions (Petition 14 of 2016) [2017] KESC 49 (KLR):** Stay of proceedings is exceptional, requiring the appeal to be "arguable with real prospects of success" and a real risk that the appeal would be rendered nugatory.

• Republic v Maina Kiai & 2 Others [2010] eKLR:

Criminal stays require exceptional circumstances; prejudice must be concrete, not hypothetical.

• Republic v David Mwangi & Another [2014] eKLR:

Mere inconvenience or anticipated difficulty is insufficient to justify a stay; the risk of injustice must be substantial.

11. In Kenya, the standard of proof for granting a stay in criminal proceedings is high: the applicant must show a strong prima facie case, real risk of prejudice, and public interest considerations.

### Court's Determination

i. Arguability of the Appeal

12. The appeal arises from the dismissal of CMCC Criminal Application No. E654/2024. The appellant sought leave to institute private criminal proceedings against the respondents.

13. Upon review of the memorandum of appeal and submissions, this court finds:

- The appeal does not disclose a strong prima facie case likely to succeed.



• The points raised are predominantly factual disputes already considered by a competent judicial officer.

14. Therefore, the appeal fails the high threshold of arguability required for a stay in criminal proceedings.

ii. Risk of Rendering Appeal Nugatory

15. The appellant claims that continuing the trial in Case No. E894/2023 may render this appeal nugatory.

16. The court finds:

- The ongoing trial concerns the criminal liability of Margaret Mwendu Wambua.
- The appellant has not established a concrete link between the appeal and the trial sufficient to demonstrate irreparable harm.
- No evidence shows that proceeding with the trial will prejudice the appeal or obstruct justice.

iii. Public Interest

17. There is no evidence that staying the trial is in the public interest. The matter involves a private loan transaction and alleged fraud, and delaying proceedings would not serve public justice.

### **Conclusion**

18. Having considered:

- The affidavit evidence, written submissions, and oral arguments;
- The high standard for granting a stay in criminal proceedings; and
- The applicable case law,

this court finds that the appellant has failed to satisfy the conditions for granting a stay.

19. The application is therefore dismissed with no orders as to costs.

20. The hearing of the instant appeal should be expedited. The handwritten proceedings shall be uploaded into the CTS

21. Mention on 14th April 2026 before the Deputy Registrar.

**DELIVERED, DATED, AND SIGNED at MOMBASA on this 5th day of MARCH 2026  
Ruling delivered through Microsoft Teams Online Platform.**

**WENDY KAGENDO MICHENI  
JUDGE**

**IN THE PRESENCE OF  
Mr. Ajilo holding brief for Mr. Otwere for the applicant.  
Mr. Sirima for the respondent  
Bebora court assistant**

SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI





THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CRIMINAL  
DATE: 2026-03-08 21:50:11

