**REPUBLIC OF KENYA**
**IN THE HIGH COURT OF KENYA AT ELDORET**
**CIVIL APPEAL NO. E227 OF 2025**

**KENYA NATIONAL BUREAU OF STATISTICS…….APPELLANT/APPLICANT**

**VERSUS**

**STANLEY KIPKOECH SAMOEI……...1ST RESPONDENT**
**IAN KIMUTAI BETT ……..2ND RESPONDENT**

**RULING**

**1.** This Appeal arises from an order made in **Eldoret Senior Principal Magistrate's Court Civil Case No. E1130 of 2021** whereof the 1st Respondent (as Plaintiff) was allowed to amend his Plaint filed therein. Dissatisfied with the decision, the Appellant (as the 2nd Defendant in the case), through **Messrs Nyairo & Co. Advocates**, filed this Appeal protesting that the order allowing amendment of the Plaint was unjustifiably granted ***ex parte*** thus locking the Appellant out of participating in the Application that led to the order.

**2.** Together with the Memorandum of Appeal, the Appellant also filed the Notice of Motion dated 19/01/2026 the subject of this Ruling basically seeking an order of stay of proceedings of the lower Court case pending hearing and determination of the Appeal.

**3.** The Application is supported by the Affidavit sworn by the Applicant's Advocate, **Eden Ogoti**, who deponed that the leave to amend pleadings was granted by way of the ***ex parte*** Court order made on 26/08/2025, without the participation of the Appellant and without ***inter partes*** hearing contrary to the law thereby causing serious prejudice to the Appellant. She deponed that the Appellant was served with the Application dated 14/08/2025 on 29/08/2025 after the event, and learnt that the Court had already allowed the Application. She urged that this appeal is yet to be set down for hearing and that the prayer for stay of the proceedings is to preserve the subject matter, that unless the order is granted, the lower Court case is likely to proceed before the appeal is heard and determined thereby rendering the Appeal nugatory and occasioning irreparable loss and prejudice to the Appellant. She urged further that considering the stage of the proceedings, the requirement for depositing of security under **Order 42 Rule 6** is inapplicable as there is no decree in place to be satisfied and/or security to be availed for its performance. He contended that the Appellant stands to suffer grave prejudice, including being compelled to proceed with a suit without a defence on record to counter the irregular amendments, that it is against the rules of natural justice to

condemn a party unheard, and that the right to heard is a constitutional and this Court ought to protect the same by granting the orders.

**4.** The Application is opposed by the Respondents by way of the Replying Affidavit sworn by the 1st Respondent on 19/09/2025, filed through **Messrs Morgan Omusundi Law Firm Advocates.** The 1st Respondent deponed that the Application is misguided and an abuse of the Court process as it seeks to halt proceedings merely because the Court allowed his Application to amend his pleadings, that the Appellant previously sought similar orders of stay before the lower Court and the same was declined, and that the present Application is merely an attempt to re-litigate issues already determined. He contended that the Appellant is seeking stay of proceedings yet it has not sought to set aside the ***ex parte*** orders allowing the order allowing the amendment, nor have they filed an Application to review the same. He therefore deponed that the Appellant, instead of pursuing the available and ordinary remedies, has rushed to seek the drastic remedy of Appeal and stay of proceedings, which are both premature and wholly unjustified. He urged that the amendment of pleadings is intended to facilitate just determination of the real issues in controversy, and to correct clerical errors without causing prejudice to the opposing party, that the amendments allowed were minor and purely clerical in nature, namely, correction of the subject motor vehicle's registration number, an erroneously entered date, and particularization of special damages, which particulars must, in any event, still be strictly proved at the hearing. He deponed that the amendment does not in any way change the nature of the suit nor occasion any prejudice to the Appellant, that the Court is vested with power to allow amendments even on its own motion, and that in this case the Court properly exercised its discretion.

**5.** Regarding stay of proceedings, Counsel described it as a drastic remedy that interrupts a party's constitutional right to have their case heard and determined on merit, and is only granted in very exceptional circumstances. He deponed that in order for stay of proceedings to be granted the Applicant must demonstrate that the appeal raises substantial questions or, otherwise, that there is an arguable Appeal, and that in this case, the Appellant raises issues touching on the discretion of the Court, which is not a substantial or exceptional ground warranting the drastic order of staying proceedings. He deponed that to grant the orders would be to unjustly delay the fair disposal of the matter considering that the same has stayed in Court for almost 4 years and it would encourage unnecessary interlocutory skirmishes at the expense of substantive justice. In conclusion, he deponed that the order allowing the amendments was made on 26/08/2024 and was served upon the Appellant on 29/08/2025 yet the instant Application was filed on 16/09/2025, after a delay that is

inordinate, deliberate and intended to merely obstruct and delay the fair disposal of the matter.

**6.** Upon perusing the Application, I informed Counsels, when the matter came up for directions, that I would not require the filing of written Submissions in determining the Application. Counsels agreed and as such, no Submissions were filed.

**Determination**

**7.** The only issue that calls for determination in this matter is "**whether an order of stay of the proceedings pending before the Magistrate's Court should issue, pending the hearing and determination of this Appeal".**

**8.** Regarding stay of proceedings, when faced with an Application of such nature, the Court is required to exercise its discretion, but which discretion, needless to state, must be exercised after due consideration of the merits of the case and the likely effect on the ends of justice, and must be grounded on judicious principles. On this, **Ringera J**, in the case of **Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000** stated the following:

> **"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 so, 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."**

**9.** Further, **F. Gikonyo J**, in the case of **Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR**, stated as follows:

> **"….. what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of**

**each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice …"**

**10.** Similarly, **Halsbury's Law of England, 4th Edition, Vol. 37 page 330** and **332** gives the following guidelines:

**"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 all 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 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 the case."**

**11.** Further, in **Kenya Wildlife Services v Jane Mutembi (2019) eKLR**, **F. Gikonyo**, again, held 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."**

**12.** In line with the foregoing guidelines, it is generally agreed that in an Application seeking grant of stay of proceedings, the matters that the Court must satisfy itself on are the following: (**a**) the Applicant has established a ***prima facie*** arguable case; (**b**) the Application was filed expeditiously; and (**c**) the Applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

**13.** Regarding "***prima facie arguable appeal***", it is settled that in Applications of this nature, an "***arguable appeal***" need only raise a single ***bona fide*** point worthy of consideration by the Appellate Court, and that it need not be one that must necessarily succeed (**see Cooperative Bank of Kenya Ltd vs Banking Insurance of Finance Union (Kenya) [2015] eKLR)**.

**14.** Looking at the Memorandum of Appeal, although the grievance preferred may at first impression appear petty as the issue is simply amendment of a few seemingly minor particulars in the Plaint, it is not, since the grievance touches on a party's right to be heard before a determination is made. The Appeal may not therefore be termed as being frivolous.

**15.** I am however curious about the Respondents' argument that the Appellant is seeking stay of proceedings yet it has not even first sought to set aside the ***ex parte*** orders that allowed the amendment of the Plaint, nor has it filed any Application for review thereof. Since the Appellant has not responded to this submission, I take it to be true. It is therefore not clear to me why the Appellant would choose to directly come to this higher Court by way of appeal instead of first moving the trial Court to set side its own ***ex parte*** orders. The Appellant, in my view, had a much easier avenue before it which, if not successful, still it would have had the chance to come to this Court by way of a substantive Appeal to challenge the refusal to set aside. The Appellant has however not taken advantage of that simple route readily available to it, and has, instead chosen the far more difficult and complicated route of directly appealing against the ex parte order. I would not say that the route chosen by the Appellant cannot result into a successful Appeal. All I am saying is that I have misgivings over the wisdom of its choice as the first port of call.

**16.** On the issue of "***expeditious***" filing of the Application, or delay, it is evident that the impugned Ruling of the trial Court was delivered on 26/08/2025, and this instant Application was filed on 20/01/2026, almost 5 months later. Considering the nature of the prayers sought herein and the general circumstances of this case, I find the delay of 4 months to be inordinate, particularly since the Appellant has not even bothered to offer any explanation thereon.

**17.** The next question is whether the Applicant has established "***sufficient cause***" to the satisfaction of the Court that it is in the interest of justice to stay proceedings of the lower Court. The phrase "***sufficient cause***" was analyzed by **Mativo J (as he then was**), in the case of **Wachira Karani v Bildad Wachira [2016] eKLR**, in which he cited the Indian Supreme Court case of **Parimal v. Veena alias Bharti (2011)**, as follows:

> **" …….. I again repeat the question what does the phrase "*sufficient cause*" mean. The Supreme Court of India in the case of Parimal vs Veena observed that:-**

> ***"sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously"***.

**18.** Upon evaluating the totality of the facts and circumstances surrounding this matter, it is my finding that the Appellant has not demonstrated sufficient cause for grant of an order of stay of proceedings pending Appeal. There is nothing that cannot be undone should the trial proceed and end against the Appellant but subsequently the Appeal ends in its favour. Should that happen, our judicial system is not short of remedies to address such eventuality. There is therefore no prejudice that may be suffered by the Appellant in the short term if the case is allowed to proceed, which cannot be cured should the Appeal be successful. Considering also that the lower Court case has been pending the year 2021 (5 years now), my view is that the balance of convenience tilts in favour of allowing the trial to proceed without further delays.

**19.** As aforesaid, the power to stay proceedings is one which ought to be exercised sparingly, and only in "***exceptional***" cases. In this case, I believe I have said enough to indicate that in my considered view, no such "***exceptional***" case has been demonstrated. The Appellant has failed to established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders for stay of proceedings.

**Final Orders**

**20.** In light of my findings above, the Applicant's Notice of Motion dated 19/01/2026 is hereby dismissed with costs to only the 1st Respondent, **Stanley Kipkoech Samoei**.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 30TH DAY OF MARCH 2026**

……..
**WANANDA JOHN R. ANURO**
**JUDGE**

**Delivered in the presence of:**

**Ms. Odwa for the Appellant**

**N/A for the Respondent**

**C/A Brian Kimathi**