



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CIVIL APPEAL NO. E001 OF 2025**

**GEORGE MIGWI.....APPLICANT**  
**VERSUS**  
**KISAJU ENTERPRISES LIMITED..... RESPONDENT**

**RULING**

[1] The applicant filed a Notice of Motion on 14<sup>th</sup> January, 2026 seeking the following orders:

1. Spent.
2. Spent.
3. There be a stay of proceedings in Kerugoya Small Claim Case SCCC E237 of 2025 Kisaju Enterprises Limited vs George Migwi pending the hearing and determination of this Appeal.
4. The costs of this application be provided for.

[2] The application is based on the grounds on the face of the application and the supporting affidavit of the applicant setting out his case is that the Respondent instituted the present suit before the Small Claims Court alleging that as its sales representative, he failed to remit monies amounting to Ksh.487,228.00 arising from goods supplied to him for sale on its behalf.

[3] He avers that upon being served with the said suit, he instructed his Advocates on record to defend him and they duly filed a Notice of Preliminary Objection challenging the jurisdiction of the Honourable Court on the grounds that the dispute arose out of an employer-employee relationship and during the course of employment and therefore fell within the exclusive jurisdiction of the Employment and Labour Relations Court. The Learned Adjudicator dismissed the said Preliminary Objection and awarded costs to the Respondent.

- [4] Further, the applicant avers that being dissatisfied and aggrieved by the said Ruling and Order, he have preferred this Appeal. The Appeal has high chances of success, as the dispute arose from an employer-employee relationship and in the course of employment and consequently, the suit ought to have been filed before the Employment and Labour Relations Court.
- [5] Lastly, the applicant avers that unless the further proceedings at the trial court are stayed, the matter will proceed on the 3<sup>rd</sup> February, 2026.
- [6] The Respondent deposed to a Replying Affidavit that the Applicant has failed to demonstrate that the appeal raises arguable issues with a probability of success, the grounds advanced being a mere repetition of issues already determined by the trial court.
- [7] Further, the Applicant has not shown any prejudice or irreparable loss that he stands to suffer should the Small Claims Court proceed to hear and determine the matter. On the contrary, the Respondent stands to suffer grave prejudice if the proceedings are stayed, as the Respondent continues to be deprived of substantial sums of money allegedly collected and withheld by the Applicant.
- [8] Lastly, the Small Claims Court matter is scheduled for hearing on 3<sup>rd</sup> February, 2026, and further delay defeats the objectives of the Small Claims Court Act on expeditious disposal of disputes.

#### **Applicant submissions**

- [9] There are no submissions on record.

#### **Respondent submissions**

- [10] In the present case, the Applicant seeks a stay of proceedings in **Kerugoya Small Claims Court Civil Case No. SCCC/E237 of 2025** pending the hearing and determination of an appeal arising from a ruling delivered on 31<sup>st</sup> October, 2025, which dismissed the Applicant's Preliminary Objection on jurisdiction. The Respondent submits that no exceptional or compelling circumstances have been demonstrated to justify the drastic remedy of stay of proceedings.
- [11] On arguability of the appeal, the Applicant has lodged an appeal challenging the ruling of the Small Claims Court which found that it had jurisdiction to hear and determine the dispute relating to alleged non remittance of monies received on behalf of the Respondent.

[12] In *Kenya Commercial Bank Ltd v Benjoh Amalgamated Ltd & Another* [1998] eKLR the Court of Appeal held that an arguable appeal need not succeed, but it must not be frivolous.

[13] The Respondent submits that the appeal herein does not raise any bona fide or arguable issues. The grounds of appeal merely restate arguments on jurisdiction that were fully canvassed and conclusively determined by the trial court. The Applicant has not identified any error of law or principle that would warrant interference with the impugned ruling.

[14] On rendering the appeal nugatory, the Respondent submits that the continuation of proceedings before the Small Claims Court will not render the appeal nugatory. The Applicant retains the right to prosecute the appeal regardless of whether the trial proceeds or not. Should the appeal ultimately succeed, the law provides adequate remedies to address any prejudice.

#### **Issues**

- [15] Whether the appeal is arguable.
- [16] Whether the appeal would be rendered nugatory if stay is not granted.
- [17] Whether it is in the interest of justice to grant stay of proceedings.

#### **Analysis**

[18] The power to grant stay of proceedings is discretionary and must be exercised judiciously. The court must consider the following:

#### **Whether the Appeal is arguable**

[19] The Applicant challenges the jurisdiction of the Small Claims Court, contending that the dispute arises from an employer–employee relationship and thus falls within the mandate of the ELRC.

[20] The challenge to jurisdiction is therefore not frivolous. Whether the relationship between the parties was strictly employer–employee or a commercial agency arrangement is a substantive legal issue that warrants interrogation on appeal.

[21] This Court is satisfied that the appeal is arguable.

#### **Whether the Appeal Would Be Rendered Nugatory**

[22] The Applicant must demonstrate that if proceedings continue, the appeal would be rendered nugatory.

[23] The Small Claims Court matter is scheduled for hearing. If proceedings continue to conclusion and judgment is delivered, and the appellate court later finds that the trial court lacked jurisdiction, the entire proceedings would be rendered a nullity.

[24] The Court of Appeal in **Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR** emphasized that the nugatory principle concerns whether what is sought to be stayed would irreversibly affect the appeal.

[25] In the present case, allowing the trial to proceed may result in wasted judicial time and unnecessary expense if jurisdiction is ultimately found to have been lacking.

#### **Interests of Justice**

[26] The Respondent argues that delay defeats the objectives of the Small Claims Court Act, which emphasizes expeditious disposal of disputes. While this Court appreciates the statutory objective of speedy resolution, the question of jurisdiction takes precedence. Proceeding with a matter before a court that may lack jurisdiction would not serve the interests of justice. Balancing the competing rights of the parties, this Court finds that preserving the substratum of the appeal is paramount.

#### **ORDERS**

[27] Accordingly, for the reasons set out above, the Court finds that the application for stay of proceedings has merit to allow the appellate court consider and determine the question of the jurisdiction of the trial court. Being a Small Claims Court matter the appeal shall be expedited to hearing.

[28] The appellant shall file and serve the Record of Appeal together with his submissions within fourteen (14) days. The Respondent shall file submissions within fourteen (14) days of service

[29] The Court shall deliver judgment in the matter on **14/5/2026**.

[30] Costs in the appeal.

*Order accordingly.*

**DATED AND DELIVERED THIS 12<sup>TH</sup> DAY OF MARCH 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Ms. Munene for Mr. Thuita for the Applicant.

Ms. Waithera for Respondents.