



**Rooftg Pacific Limited v Space & Style Limited (Commercial Case E095 of 2024)
[2026] KEHC 4146 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E095 OF 2024
MA OTIENO, J
MARCH 19, 2026**

BETWEEN

ROOFTG PACIFIC LIMITED PLAINTIFF

AND

SPACE & STYLE LIMITED DEFENDANT

RULING

Introduction

1. The Court is called upon to determine the Notice of Motion dated 14 July 2025, brought by the Defendant/Applicant seeking a stay of proceedings pending the hearing and determination of an intended appeal arising from the Court's ruling of 19 June 2025, which dismissed the Applicant's preliminary objection on jurisdiction.
2. The application is supported by the affidavit of Winfrida Wanjiku Ngumi. The application is premised on the grounds that the defendant is dissatisfied with this Court's decision of 19 June 2025, has lodged a notice of appeal, and that the intended appeal raised substantial and arguable issues of law, particularly on jurisdiction.
3. It was contended that the matter was scheduled for pre-trial, and unless stayed, would proceed before the jurisdictional issue was determined, thereby causing prejudice to the applicant.
4. The defendant further relied on the existence of a related constitutional petition arising from the parties' distributorship relationship, and argued that the interests of justice and judicial economy warranted a stay, noting that the respondent would not suffer prejudice incapable of compensation by costs.



5. The plaintiff filed grounds of opposition dated 20 February 2026, but filed on 18 March 2026, outside the timelines directed by the Court. The same having been filed late will therefore not be considered in determining the current application.
6. In support of the application, the Applicant filed submissions dated 1 December 2025, arguing that the intended appeal raises substantial issues on jurisdiction, and that unless proceedings are stayed, the appeal will be rendered nugatory.
7. No submissions were filed on behalf of the Respondent.

Analysis and Determination

8. I have considered the application, the grounds of opposition, and the Defendant's submissions on record.
9. The principles governing the grant of a stay of proceedings are well settled. In *Global Tours & Travels Limited v Five Continents Travel Limited* [2015] KECA 789 (KLR), the Court of Appeal emphasized that the power to grant a stay of proceedings is discretionary and must be exercised sparingly, in the interests of justice, and only in clear and exceptional circumstances. The Court (Ringera J) stated that:

“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.”
10. Similarly, in *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR), the court reaffirmed the position in the *Global Tours & Travels Limited* (supra) case, asserting that stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation since it restricts a party's right of access to justice, right to be heard without delay and overall, right to fair trial.
11. The principles arising from the above cases are that stay of proceedings is a discretionary remedy, to be exercised sparingly and only in clear and compelling circumstances, because it denies a party the right to have their case heard and delays the administration of justice.
12. As cited by the Applicant, the test in *Global Tours & Travel Ltd* requires the Court to consider whether a stay is in the interests of justice, taking into account: i. expeditious disposal of cases; ii. prima facie arguability of the intended appeal (without determining prospects of success); iii. optimal use of judicial time; and iv. whether the application was made expeditiously.
13. In the present case, even accepting that the intended appeal raises an arguable point on jurisdiction, arguability alone does not automatically warrant a stay. The Applicant must additionally demonstrate that the appeal would be rendered nugatory if proceedings continue.
14. As to whether the intended appeal risks being rendered nugatory, the Applicant argued that if the matter proceeds and the appeal later succeeds, the proceedings will be a nullity. However, this



position assumes that the mere continuation of proceedings necessarily prejudices the Applicant. That assumption is neither self-evident nor absolute. Courts routinely proceed with matters even as jurisdictional appeals are pursued, unless compelling prejudice is demonstrated.

15. Here, the Applicant has not shown any specific prejudice that goes beyond the ordinary inconvenience of continuing with litigation. The assertion that judicial time may be wasted is speculative and insufficient. Judicial time is safeguarded through proper case management, and not by freezing proceedings each time a party expresses dissatisfaction with an interlocutory finding.
16. The demands of justice require that the Court must balance the Applicant's right to pursue an appeal with the Respondent's right to expeditious disposal of its claim.
17. The underlying suit is ready to proceed to Pre-Trial Conference, and the Respondent should not be denied progress in its case on the basis of a jurisdictional point that has already been determined by this Court, unless exceptional circumstances exist.
18. No material has been placed before this Court demonstrating that the Respondent will not suffer prejudice from delay. Conversely, any suspension of proceedings at this stage directly undermines the efficiency of this Court, whose mandate is to ensure timely resolution of commercial disputes.
19. The existence of a related constitutional petition does not justify halting this suit. The Applicant itself concedes that the issues in the petition are distinct, and the mere coexistence of multiple proceedings involving the same parties is not by itself a basis for staying a commercial trial.
20. While the Court agrees with the Applicant's submissions that the application was brought promptly after delivery of the ruling, promptness alone does not cure the Applicant's failure to satisfy the other essential elements of the test.
21. In the premises, the Court finds that the Applicant has not demonstrated that the appeal will be rendered nugatory if proceedings continue, nor has it shown that the interests of justice tilt in favour of granting a stay.
22. The upshot of the foregoing is that the Notice of Motion dated 14 July 2025 is hereby dismissed.
23. There shall be no order as to costs, the Respondent having failed to file any response or submissions in opposition to the application.
24. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH 2026

HON. JUSTICE MOSES ADO

JUDGE OF THE HIGH COURT

In the presence of:

C/A – Moses

Ms. Kitptum h/b for Kahura.....for the Plaintiff/Respondent

Kiama.....for the Defendant/Applicant

