

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CIVIL APPEAL NO. E042 OF 2025

ZACHARY NJUGUNA MURIITHI.....APPELLANT/APPLICANT

-VERSUS-

ROSE WANJIKU MUNENE.....RESPONDENT

RULING

1. Zachary Njuguna Muriithi, the Appellant/Applicant approached this court through an application dated 1st September, 2025 seeking prayers thus;

1) Spent.

2) Spent.

3) That pending the hearing and determination of this appeal, the honourable court be pleased to stay proceedings in Nyahururu MCCC No. E129 of 2022 Rose Wanjiku Munene v Zachary Njuguna Muriithi.

4) That the costs of this application be provided for.

2. The application is based on grounds that the Applicant has appealed against the Ruling of Hon. M.W. Njuguna SRM, in **MCCC E129 of 2022** delivered on 30th July, 2025. That the appeal is against part of the Ruling where the court following an application for review dated 27th October, 2022,

reinstated the Respondent's suit that had been struck out for want of a reasonable cause of action since the loan agreement which was the issue of the suit allowed the Applicant to recover the loan amount from the motor vehicle that had been used as security.

3. That the suit was struck out on 29th September, 2022, as it did not disclose any reasonable cause of action against the Applicant(Appellant) following a Preliminary Objection raised.
4. That the trial court dealt with the Ruling without an input of parties and reinstated the suit hence allowed the impugned Ruling a question to be determined on appeal and if the order is not stayed the appeal shall be rendered nugatory.
5. The application is unopposed. Upon service of the application, on the mention date, Mr. Kemboi appeared for the Respondent and notified the court that they intended to put in a cross - appeal. He was granted leave to file a response to the application, but, he did not.
6. The Applicant filed submissions that I have duly considered.
7. It has been demonstrated that an appeal has been filed against the order of the trial court. Grant of stay of the proceedings is discretionary as provided by **Order 42 Rule 6(1) of the Civil Procedure Rules**. The Applicant cited the case of **Re Global Tours & Travel Ltd HCWC No. 43 of 2000** as cited in **Philip Mutinda v Lady Lori (K) Limited [2021] KEELRC 1966 (KLR)** where the court stated thus;

“.....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 case, 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.”

- 8.** This is a matter where the Respondent per the sentiments of counsel is also aggrieved. And the averments by the Applicant demonstrate the fact of an injustice having been occasioned. Any irreversible action should be prevented. The continuation of proceedings would make the appeal nugatory. The balance of probabilities lies with the Applicant.

9. Therefore, I exercise discretion by granting the order sought.
The application of stay of proceedings is allowed as prayed.
Pending hearing and determination of the appeal.

10. Costs to abide the appeal.

Dated, signed and delivered virtually this 14th day of April, 2026.

.....

L.N. MUTENDE

JUDGE