



**Mwaura v Mukonza (Environment and Land Appeal E009 of 2020)
[2026] KEELC 2487 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2487 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E009 OF 2020
NA MATHEKA, J
APRIL 28, 2026**

BETWEEN

JULIUS NJUNGUMA MWAURA APPELLANT

AND

JACKSON MUKONZA RESPONDENT

RULING

1. The application is dated 17th October 2024 and is brought under order 42 rule 6 of the Civil Procedure Rules seeking the following orders;
 1. That, pending hearing and determination of this application the Court do stay taxation of the Bill of Costs herein and any other proceedings herein.
 2. That, pending hearing and determination of Appellants/Applicant’s appeal being Nairobi Court of Appeal Civil Appeal Number 704 of 2024 the Court do stay taxation of the bill of costs herein and any other subsequent proceedings and orders therein.
 3. That costs of this application be awarded to the applicant.
2. It is based on the following grounds that Judgment of this Court was delivered on 19th September 2023 and the Applicant made an application for review of the said judgment which application was dismissed vide the Court’s ruling delivered on 20th June 2024. That the Applicant being dissatisfied with the said ruling has preferred an appeal at the Court of Appeal which is NAIROBI CIVIL APPEAL NO 704 OF 2024. That the appeal has been duly filed and is only awaiting directions of the Court of Appeal. That the Respondent has filed a Bill of Costs that is dated 21st September 2023 seeking to recover his costs awarded by the Court and the Bill of Costs is scheduled for taxation on 10th December 2024. That the Applicant’s appeal at the Court of Appeal raises serious triable issues of law and the appeal is likely to culminate in the overturning of the decision of the High Court including the award of costs. That it is in the wider interests of justice that the proceedings of for taxation of Bill



of Costs are stayed pending the determination of the appeal. That if the Bill of Costs is taxed and the appeal is successful, the Applicant will suffer irreparable financial loss as he will be unable to recover his costs from the Respondent who is not a man of means. That if the orders sought herein are not granted, the entire appeal will be defeated and rendered nugatory. That the grant of the orders will not cause any harm or prejudice to the Respondent as the Applicant is keen on prosecuting the appeal and at the conclusion if it is not successful the Respondent can proceed to tax his bill. That the Applicant is ready and willing to abide by any conditions that the Court may issue as security.

3. The Respondent stated that the bill of costs relates to the costs issued in the judgement of this court dated 19th September 2023. That on the 21st September 2023 the applicant filed an application for stay of execution of the judgement dated 19th September 2023 and all subsequent proceedings and hence this application is res judicata vide the ruling of the court dated 20th June 2024. That there is no appeal against the judgement of the court dated 19th September 2023.
4. This court has considered the application and the submissions therein. The Respondent's submission is that the application is herein is res judicata to ruling of the court dated 20th June 2024. Section 7 of the *Civil Procedure Act* Provides

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties. or between parties under whom they or any of them claim. litigating under the same title. in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised. and has been heard and finally decided by such court.”

5. Expounding further on the essence of the doctrine this Court in *John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others* (2015) eKLR pronounced itself as follows;

The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”

6. I have perused the court proceedings and find that by a ruling dated 20th June 2024 Justice Christine Ochieng found the notice of motion dated 21st November 2023 unmerited and dismissed it. The said application sought the court to review, vary and/or set aside the judgement delivered on the 19th September 2023 and to make a finding that the appeal was merited and allow the same.
7. The Applicant submitted that this application is not res judicata as it seeks to stay taxation of the Respondent's bill of costs pending the hearing and determination of Nairobi Appeal No. 704 of 2024. I concur with the Applicants submissions that the application is not res judicata.



8. I will then proceed to consider the application and submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the Civil Procedure Rules as follows;

No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred, shall be at liberty, on an application being made, to consider such application and to make such orders thereon as may to it seem just, any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have the orders set aside.”

9. Order 42, rule 6 states:

No order for stay of execution shall be made under sub-rule (1) unless:-

- a. The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

10. The principles governing the exercise of the court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of *Reliance Bank Ltd (In Liquidation) vs Norlake Investments Ltd – Civil Appl. No. Nai. 93/02 (UR)*, thus;

Hitherto, this Court has consistently maintained that for an application under rule 5(2) (b) to succeed, the applicant must satisfy the court on two matters, namely: -

1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”

11. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange vs Richard Nyagaka Tongi & 2 Others eKLR* where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;

..... . The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”



12. In the case of Mohamed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat (2013) eKLR, the court stated that;

That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right

13. We are further guided by the court's decision in Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others Civil Appeal No. 291 of 1997, at Page 4 as follows:

. . . the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . . the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay."

14. I find that the Applicant is guilty of laches as ruling was delivered on 20th June 2024 and the application is dated 10th October 2024. The Judgment of the Court was delivered on 19th September 2023 and the Applicant made an application for review of the said judgment which application was dismissed vide the Court's ruling delivered on 20th June 2024. That the Applicant being dissatisfied with the said ruling preferred an appeal at the Court of Appeal which is NAIROBI CIVIL APPEAL NO 704 OF 2024. That the Respondent then filed a Bill of Costs that is dated 21st September 2023 seeking to recover his costs awarded by the Court and the Bill of Costs was scheduled for taxation on 10th December 2024. I find that the grounds of appeal raised in the memorandum of appeal do not raise any arguable appeal and I find that if the application is not granted, the success of the appeal, were it to succeed, would not be rendered nugatory as what is to be stayed if at all are the costs. I find that the applicant has not fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF APRIL 2026.

N.A. MATHEKA

JUDGE

