

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

MISCELLANEOUS CRIMINAL APPLICATION NO. E018 OF

2025

**NANCY MURIGI
NGIGI.....INTENDED
APPELLANT/RESPONDENT**

VERSUS

**REPUBLIC.....
RESPONDENT
MOSES KAMORI
NGIGI.....INTENDED INTERESTED
PARTY/APPLICANT**

R U L I N G

Brief facts

1. The application for determination dated 25th September 2025 seeks for orders of stay of execution in respect of the ruling in the instant case delivered on 10th September 2025 pending the hearing and determination of the appeal before the Court of Appeal. The applicant further seeks for orders of stay of proceedings pending the hearing and determination of the appeal.

2. In opposition to the application, the respondents filed Replying Affidavits dated 5th January 2026 and 19th November 2025 respectively.

Applicant's Case

3. The applicant states that the instant court rendered a ruling on 10th September 2025 to the effect that his application to be enjoined as an interested party was dismissed. Being aggrieved by the said decision, the applicant states that he has filed a Notice of Appeal in the Court of Appeal. The applicant argues that the appeal raises arguable points and has high chances of success. The applicant further states that he is ready and willing to abide by any terms and conditions as to security as the court may deem.

The Respondent's Case

4. The respondent states the applicant has not demonstrated how the ends of justice would be better served by staying the current case and hearing his appeal in the Court of Appeal. Further, the respondent states that the applicant has not given any compelling reasons for seeking stay orders as he is well represented in the suit by the office of the Director of Public Prosecution. The respondent argues that stay in the matter will unnecessarily delay the matter which would otherwise be simple to decide.

5. The prosecution/respondent states that the applicant has not raised any grounds for stay of proceedings neither has he shown what prejudice he shall suffer. The respondent further states that the applicant has not demonstrated any point of law to show that his appeal has overwhelming chances of success. The respondent avers that the application lacks merit and ought to be dismissed

and the substantive application dated 5th March 2025 be set down for hearing.

6. The applicant filed a Further affidavit dated 8th January 2026 and states that he filed an appeal in the Court of Appeal vide Criminal Appeal No. E097 of 2025. The applicant further states that his application is merited as he is the one who initiated the criminal case in the trial court and would be affected by the decision of the court. Further, he has a right to be heard and participate in proceedings that directly impact his interests and his presence before the instant court is necessary to enable the court to effectively and completely adjudicate all the issues in the dispute. The applicant states that the appeal shall be rendered nugatory if the proceedings and ruling are not stayed.

7. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

8. The applicant relies on the case of **William Odhiambo Ramogi & 2 Others vs the Honourable Attorney General & 3 Others [2019] eKLR** and submits that if the application dated 5th March 2025 is determined before his appeal is heard, the very question of whether he ought to have been enjoined will have been overtaken by events and the appeal will be reduced to an academic exercise. The applicant further relies on the case of *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)* and states that his appeal raises substantial and arguable issues of law and procedure on whether he ought to have been enjoined as an interested party and his rights under Article 50 of the Constitution on his right to a fair hearing.
9. Relying on the case of **Kenya Wildlife Service vs James Mutembei [2019] eKLR**, the applicant argues that the appeal will be rendered nugatory if the proceedings continue as the application dated 5th March 2025 is pending for ruling. Thus, if the court proceeds to determine the said application without staying the proceedings, his right to be heard will be defeated. The applicant further refers to the decision in **Communications Commission of Kenya & 4 Others vs Royal Media Services Limited & 7 Others [2014] eKLR** and submits that he is the complainant who initiated the criminal proceedings in the trial court and he has a direct personal interest in the proceedings. Thus his

absence would deprive the court of the full context required to adjudicate all issues comprehensively.

10. The applicant submits that the instant application was filed promptly with a clear explanation for any delay as his advocates received the certified copy of the ruling on 22nd September 2025 and the said ruling was required for the preparation of the Memorandum of Appeal.

11. The applicant relies on **Order 42 Rule 6(2) of the Civil Procedure Rules** and the cases of **New Stanley Hotel Limited vs Arcade Tobacconist Limited (1986) KLR 757** and **RWW vs EKW [2019] eKLR** and submits that he stands to suffer substantial loss by being excluded from proceedings in which he has a direct and personal

interest. The applicant argues that such loss is irreparable and goes to the core of his constitutional right to a fair hearing under Article 50 of the Constitution. The applicant submits that he is willing to abide by any terms and conditions as to security.

The Respondent's Submissions

12. The respondent refers to the case of Global Tours & Travels Limited Nairobi HC Winding Up Cause No. 43 of 2000 and submits that it would not be in the interests of justice to grant stay of proceedings as it will only delay the substantive application. Further, the applicant has not demonstrated that he has an arguable appeal to warrant issuance of the orders being sought.

The Law

Whether the application has merit

13. Stay of proceedings is a grave judicial action which seriously interferes with the right of the litigant to conduct his litigation. For the court to grant stay of proceedings, the court ought to consider the prevailing circumstances of each case. In **Goddy Mwakio & Another vs Republic [2011] eKLR**, the Court of Appeal stated that:-

An order for stay of proceedings, particularly stay of criminal proceedings is made sparingly and only in exceptional circumstances.....The order is not given as a matter of course.

14. Similarly in **Erdemann Property Limited & 2 others vs Ethics and Anti-Corruption Commission & 5 Others [2022] KECA 860 (KLR)**, the Court of Appeal held that:-

We also take note of the fact that the proceedings being of a criminal nature, there must be demonstration of exceptional circumstances to justify interference with the prosecution. The applicants are apprehensive that if the criminal proceedings against them proceed, they may be severely prejudiced. However, it is common ground

that the court hearing the criminal proceedings has the obligation of ensuring that the applicants get a fair trial. The applicants also could appeal, should they not be satisfied with the decision of the Chief Magistrate's Court or the High Court. We find that the applicants are simply jumping the gun, as other than mere speculation, they have not demonstrated any exceptional circumstances to justify interference with the criminal prosecution.

15. In the instant case the applicant argues that his right to fair trial will be infringed as he is the one who initiated the criminal proceedings in the trial court and therefore has a direct and personal interest in the proceedings. He further argues that if the proceedings are not stayed, the substantive application dated 5th March 2025 will be heard and determined which will render his appeal on joinder nugatory.

16. On perusal of the record, it is noteworthy that the applicant was the complainant in Thika Chief Magistrate's Court Criminal Case No. 8255 of 2018 and he gave his evidence as the key witness. Furthermore, it is evident that the ODPP is the mouthpiece of the applicant and his interests will be advocated for by the ODPP. The ODPP under Article 157(6) of the Constitution has jurisdiction legal mandate to institute, undertake, take over, continue and withdraw criminal proceedings. As such, the applicant's right to fair trial is not likely to be infringed as the ODPP advocates for the interests of complainants and

victims in criminal cases. The criminal case in the lower court was initiated in the year 2018 which shows that it has been in the corridors of justice for over eight (8) years. Any further delay of the trial is likely to negatively impact the applicant who is the victim in this instant. It is noted that the application dated 5/02/2025 to which the applicant herein seeks to be enjoined as a party is all about extension of time to appeal and for bail pending appeal. The orders sought in the application are orders within the discretion of the court to grant. If extension of time to appeal is granted after hearing the said application, the applicant will have an opportunity to apply to be enjoined in the intended appeal which form substantial proceedings likely to affect him as a complainant in Criminal Case No.8255 of 2018. By the court declining to allow joinder, in this application before it, the applicant has not been denied the right of hearing as the victim. The time of the applicant to be heard is yet to come and will be actualized in the intended appeal, in the event that the court will grant extension of time to appeal.

17. The applicant has further sought stay of execution of this court's ruling dated 10th September 2025 on the basis that the appeal shall be rendered nugatory as he stands to suffer substantial loss from being excluded from the proceedings. As things stand now, this court is hearing a simple application to extend time to appeal and for bail pending intended appeal. The appeal may come or not come later depending on the outcome of the pending

application dated 5/2/2025. The ODPP's role in the pending application is sufficient in the pending application. The applicant is not likely to suffer any prejudice in not participating in the said application. The applicant has failed to show that he will be affected in any way should stay be refused.

18. I have considered, the grounds relied on this application and I am of the view that it has no merit. The applicant has not, in my view demonstrated any exceptional circumstances to warrant grant of orders to stay these proceedings.

19. Consequently, this application is dismissed for lack of merit with no orders as to costs.

20. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 24TH DAY OF APRIL 2026.***

**F. MUCHEMI
JUDGE**