



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELCLA E015 OF 2025

**JOSEPH NG'ANG'A
KIARIE.....APPELLANT/APPLICANT**

VERSUS

**EDWIN MUNYUA KAMAU.....
.....RESPONDENT**

(Being an Appeal from the Ruling and Orders of Hon. Christine Asuna Okello, Chief Magistrate's Court, Ruiru Law Courts, delivered on 14th February 2025 in M.C.E.L.C No. E076 of 2024 for the Application Dated 14th October 2024)

**EDWIN MUNYUA
KAMAU.....PLAINTIFF/APPLICANT**

VERSUS

**JOSEPH NG'ANG'A
KIARIE.....DEFENDANT**

RULING

1. The Applicant vide a Notice of Motion dated 21/02/2025 and brought under Order 42 Rule 6 (1), Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3 3A and 65 of the Civil Procedure Act sought the following from this Court:

1) Spent.

2) That this Honorable Court be pleased to order a stay of the Ruling and orders delivered by the subordinate Court on 14th February 2025 in MCELC No. E076 of 2024 Ruiru Law Courts and a stay of proceedings in the said matter pending the hearing and determination of this application.

3) That this Honorable Court be pleased to order a stay of proceedings in MCELC No. E076 of 2024 Ruiru Law Courts pending the hearing and determination of the appeal filed herein;

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

2. The Application is based on the grounds on the face of it and supported by the Affidavit of Joseph Ng'ang'a Kiarie the Applicant sworn on 20/02/2025.
3. The Applicant depones that he has preferred an appeal against the decision made following the Ruling delivered on 14/02/2025 in **MCELC No. E076 OF 2024**. This is because, the Applicant believes that the proceedings will go on at the Court since the hearing has been set for 15/05/2025.
4. The Applicant contends that the Respondent's case was reinstated by the same Court that had rightfully dismissed it on 4/10/2024 and that the impugned Ruling is prejudicial to the Applicant and he stands to suffer irreparable harm and

loss if the application herein is allowed, since he has an arguable appeal.

5. According to the Applicant, the Learned Magistrate erred in law and fact by finding that the Respondent's suit was dismissed under Order 17 Rule 2(3) while it was actually dismissed under Order 12 Rule 3 for non-attendance of the Respondent on three (3) dates set for the hearing.
6. Further that the Magistrate erred by setting aside orders issued on 4/10/2024 finding that the Respondent had provided sufficient grounds for review. That the Magistrate also erred by finding that the Respondent's suit against the Applicant had been dismissed due to mistake/error of Counsel while there is clear evidence to the contrary.
7. That an appeal does not operate as stay of proceedings and that his application is to seek a stay of all proceedings at the Subordinate Court in **MCELC No. E076 of 2024** at Ruiru Law Courts until the appeal is heard and determined
8. The Application is opposed vide the Replying Affidavit sworn by Edwin Munyua Kamau the Respondent on 23/06/2025 where he deposes that the appeal and Motion are unmeritorious and amount to an attempt to shut him out of Court before the dispute between the parties can receive substantive determination.
9. On the specific complaint raised in ground 2 of the Notice of Motion, the Respondent deposes that the same has been overtaken by events, as the trial in **Ruiru MCELC E076 of**

2024 has not yet commenced, owing to an application for amendment of pleadings he filed on 9/04/2025, which remains pending before the trial Court.

10. The Respondent traces the background of the matter to his filing of **Ruiru MCELC E076 of 2024** on 9/04/2024, together with an application for an interim injunction for maintenance of the status quo over the suit property. On 30/04/2024, the trial Court inquired of both Counsel whether they were agreeable to maintaining the status quo pending the hearing and determination of the suit, and upon consultation a consent order to that effect was duly recorded. The Respondent deposes that following further proceedings well captured in the lower Court record, the trial Court dismissed his suit on 4/10/2024 and fixed the hearing of the Appellant/Applicant's Counterclaim for 1/11/2024. The suit was, at the time of dismissal, barely six months old and had been before the Court on more than five occasions.
11. Of particular gravity, the Respondent deposes that on 10/10/2024, a mere six days after the dismissal of his suit, the Appellant/Applicant mobilised persons who attacked, raided, vandalized and forcibly evicted his family, including minor children, from the suit property. He avers that this conduct is plainly disloyal, the Appellant/Applicant having on the one hand prayed for an order of eviction and vacant possession as the first prayer in his Counterclaim, while on the other hand proceeding to effect that very eviction

through unlawful self-help, even as the Counterclaim was already scheduled for hearing by the trial Court.

12. He further deposes that what began as a question going to the validity of a completion notice and specific performance of a transaction has, by reason of the Appellant/Applicant's deliberate and malicious conduct on 30/12/2023, 6/04/2024 and 10/10/2024, grown into a matter involving extensive damages and loss.

13. On the substantive question of the appeal, the Respondent deposes that the trial Court's decision to reinstate his suit was a proper exercise of judicial discretion in the interests of substantive justice, and that the Appellant/Applicant has not demonstrated any of the recognised grounds upon which an appellate Court may properly interfere with the exercise of such discretion, whether misdirection in law or fact, failure to consider relevant factors, consideration of irrelevant factors, unreasonableness, abuse of discretion, or violation of constitutional or statutory provisions. He further deposes that the Appellant/Applicant has suffered no prejudice from the reinstatement, as all matters in dispute over the suit property may now be considered and determined on their merits. He urges the Court to decline to interfere with the trial Court's discretion.

14. In conclusion, the Respondent deposes that both the appeal and the Notice of Motion are designed to deny him

access to justice and to foreclose a full and substantive hearing of all disputes relating to the suit property before the trial Court, and prays that they be dismissed with costs. He adds that should either party be dissatisfied with the eventual Judgment of the trial Court, the right of appeal will then be properly available on the basis of a full determination, rather than the present appeal which, in his view, seeks to remove him from the seat of justice before he has been heard.

15. The application was canvassed by way of written submissions. The Applicant filed their written submissions dated 23/07/2025 and the Respondent filed theirs dated 15/10/2025.

Applicant's written submissions

16. The Applicant advances four principal grounds in support of the application for stay, namely: that the appeal is arguable; that the appeal would be rendered nugatory if stay orders are not granted; that the application has been brought without undue delay; and that the Applicant stands to suffer substantial loss if stay is refused. The jurisdiction to grant stay of execution and proceedings is properly founded under Order 42 Rule 6 of the Civil Procedure Rules, 2010.
17. On the first limb, the Applicant relies on the decision of the Supreme Court in **Munya v Kithinji & 2 Others (Application 5 of 2014) [2014] KESC 30 (KLR) (Ruling of 2nd April 2014)**, where the Court crystallised the

principles governing stay of execution and stated that before any Court grants such orders, the Appellant or intending Appellant must satisfy the Court that the appeal or intended appeal is arguable and not frivolous, and that unless stay is granted the appeal, were it to eventually succeed, would be rendered nugatory.

18. Beyond those two conditions, the Applicant also draws the Court's attention to the decision in **Elena Doudoladova Korir v Kenyatta University [2012] eKLR**, where the Court held that the discretion to order stay is subject to the conditions of sufficient cause, substantial loss, furnishing of security, and the making of the application without unreasonable delay. It was further held in that case, following **Hassan Guyo Wakalo v Straman EA Ltd [2013] eKLR**, that an Applicant must prove that if the orders sought are not granted and the appeal eventually succeeds, the same shall have been rendered nugatory, and that these twin principles go hand in hand such that failure to prove one dislodges the other.

19. As to what constitutes an arguable appeal, the Applicant invokes the holding of the Court of Appeal in **Stanley Ng'ethe Kinyanjui v Tony Ketter & 5 Others [2015] KECA 790 (KLR)** where the Court described an arguable appeal as one which is not frivolous but which ought to be argued fully before the Court, and not necessarily one which must succeed. The Court cautioned

further that in considering such an application the Court must not make definitive or final findings of fact or law, as doing so may embarrass the ultimate hearing of the main appeal. That position was affirmed in **Ndambuki & Another (Suing as administrators to the Late Gregory Ndambuki) v National Land Commission & 2 Others (Civil Application E092 of 2024) [2024] KECA 534 (KLR) (Ruling of 9th May 2024)**, where the Court of Appeal reiterated that an arguable ground is not one which must necessarily succeed but one which raises a bona fide issue capable of being fully argued before the Court.

20. The Applicant submits that bona fide arguable issues in an appeal against the exercise of discretion by a lower Court are measured by the standard set in **Mbogo & Another v Shah [1968] EA**, where Sir Clement de Lestang, V.P., stated at page 94 that a Court will not interfere with the exercise of discretion of an inferior Court unless it is satisfied that the decision is clearly wrong because the Court misdirected itself, acted on matters on which it should not have acted, or failed to take into consideration matters which it should have considered, and in so doing arrived at the wrong conclusion.

21. Applying that standard, the Applicant contends that the Learned Magistrate misdirected herself both in law and on the facts. Specifically, the Magistrate found that the Respondent's suit was dismissed under Order 17 Rule 2(3) of the Civil Procedure Rules, whereas in truth the dismissal had

been ordered under Order 12 Rule 3 for non-attendance of the Respondent on three separate hearing dates. The Applicant further submits that the Learned Magistrate failed to properly apply the grounds for review and setting aside of orders as prescribed under Order 45 of the Civil Procedure Rules, which the Court in **Ribiru v Mwaniki & 2 Others (Civil Appeal 37 of 2023) [2024] KEHC 10417 (KLR) (Ruling of 23rd August 2024)** held provides for three circumstances under which review may be granted, namely: discovery of new and important matter or evidence which could not after due diligence have been placed before the Court at the time the Decree was passed; a mistake or error apparent on the face of the record; or any other sufficient reason.

22. The Applicant submits that the Learned Magistrate erred by ordering reinstatement without properly considering the conditions that must be satisfied before such an order is made. It is also submitted that the Learned Magistrate further misdirected herself by relying on the principle that the mistake of Counsel should not be visited upon a litigant, since, in the Applicant's submission, the dismissal had not been brought about by any error of Counsel but by the Respondent's own failure to attend hearing on three separate occasions.

23. On the second limb, the Applicant relies again on **Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others, (supra)**

where the Court held that the term nugatory carries its full meaning and does not only mean worthless, futile or invalid but also means trifling, and that whether an appeal will be rendered nugatory depends on whether what is sought to be stayed, if allowed to happen, is reversible, and if not reversible, whether damages would reasonably compensate the aggrieved party.

24. The Applicant submits that the Subordinate Court reinstated a suit that had been rightfully dismissed on the 4/10/2024, and that the only matter that then remained pending before the Subordinate Court was the hearing of the Applicant's undefended Counter-claim. Given that the matter has a mention date scheduled for the 19/09/2025 and a hearing of the reinstated suit may well take place before the appeal is determined, the Applicant argues that the appeal will be rendered nugatory if stay is not granted.

25. On the third limb, the Applicant notes that the impugned Ruling was delivered on the 14/02/2025, and that both the Memorandum of Appeal and the present application were filed on the 21/02/2025, that is, within one week of the Ruling. The application is therefore said to have been brought without undue delay.

26. On the fourth limb, the Applicant relies on the definition of substantial loss adopted by Ogolla J in **Tropical Commodities Suppliers Ltd & Others v International Credit Bank Ltd (in liquidation) [2004] 2 EA 331**, where

the learned Judge stated that substantial loss does not represent any particular mathematical formula but is rather a qualitative concept referring to any loss, great or small, that is of real worth or value as distinguished from a loss that is merely nominal.

27. Thus, the Applicant submits that the reinstatement of the Respondent's suit at a time when only the Applicant's undefended Counter-claim remained pending is highly prejudicial, and that the Applicant stands to suffer substantial and irreparable harm if the Subordinate Court proceeds to hear and determine the matter before the appeal herein is concluded.

28. In conclusion, the Applicant urges this Honourable Court to find that the conditions for the grant of stay have been satisfied and to allow the application as prayed.

Respondent's written submissions

29. The Respondent's submissions are filed in opposition to the Applicant's application. At the heart of the Respondent's case is the position that the Applicant is seeking to interfere with a decision arrived at through the proper and lawful exercise of the trial Court's discretionary powers, a decision that promotes the delivery of substantive justice.

30. By way of background, the Respondent filed the suit in **MCELC No. E076 of 2024** before the Ruiru Law Courts. The matter was scheduled for hearing on the 4/10/2024 and was dismissed on that date for want of prosecution and non-

attendance. The matter was then set down for hearing of the Applicant's Counter-claim on the 1/11/2024. The Respondent submits that Counsel on record immediately and without delay filed an application for reinstatement dated the 14/10/2024. After parties filed their respective submissions, the Court delivered its Ruling on the 14/02/2025 and reinstated the suit. The Applicant thereafter filed the appeal and the present application challenging that reinstatement.

31. The Respondent frames three issues for determination which are:

- i. *Whether this Honourable Court ought to set aside the Ruling and orders of the 14th February 2025;*
- ii. *Whether the trial Court exercised its discretion in a proper manner; and*
- iii. *Whether the appeal and prayers sought should be allowed.*

32. On the first issue, the Respondent submits that the very rules that provide for dismissal of a suit for want of prosecution are the same rules that vest in the Court a discretion to recall and reinstate such a suit. Order 17 Rule 2 of the Civil Procedure Rules is invoked, which provides in sub-rule (1) that in any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction may dismiss the suit; sub-rule (2) allows

the Court upon cause being shown to make such orders as it thinks fit to obtain expeditious hearing; sub-rule (3) provides that any party to the suit may apply for its dismissal as provided under sub-rule (1); and sub-rule (4) empowers the Court to dismiss the suit for non-compliance with any direction given under that order.

33. The Respondent further notes that at the time of dismissal the suit was only six months old in the trial Court, and that after realizing the dismissal the Respondent immediately filed the application for reinstatement, whereupon the trial Court, being satisfied by the reasons given for non-attendance, exercised its discretion and reinstated the matter.

34. The Respondent relies on Article 159 of the Constitution of Kenya 2010, which enjoins Courts to administer substantive justice, and specifically on Article 159(2)(d), which provides that justice shall be administered without undue regard to procedural technicalities. It is submitted that the overriding objective principle is not aimed at giving justice to one party at the expense of another but at ensuring that the ends of justice are met for all parties involved or likely to be affected.

35. The Respondent submits that where a party seeks the Court's intervention following default or non-compliance with a procedural step, the demonstration of a reasonable explanation for the non-compliance entitles the Court to

exercise its discretion in favour of that party. In the present case, the Respondent demonstrated to the Court that the failure to attend the hearing on the 4/10/2024 was not attributable to the Respondent himself but to the sickness of the Advocate on record, and that this was a circumstance beyond the Respondent's control.

36. In his submissions, the Respondent cites the decision in **Rachael Mukami Ngugi v Mercy Wanjiru Thogo [2018] eKLR** where the Court allowed reinstatement of an application that had been dismissed for non-attendance, with the Judge considering the circumstances that led to the dismissal and finding that the non-attendance was not occasioned by any default on the part of the Applicant.

37. The Respondent also invokes Order 51 Rule 10 of the Civil Procedure Rules, which provides that no application shall be defeated on a technicality or for want of form that does not affect the substance of the application, and that no objection shall be taken and no application refused merely by reason of a failure to cite the correct order, rule or statutory provision.

38. In the submissions the Respondent further relies on Section 3A of the Civil Procedure Act, which preserves the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court, and on Order 12 Rule 7 of the Civil Procedure Rules, which provides that where under that Order

Judgment has been entered or the suit dismissed the Court may on application set aside or vary the Judgment or order upon such terms as may be just.

39. On that discretion, the Respondent invokes the decision in **Shah v Mbogo & Another [1967] EA 116**, where the Court held that the discretion to set aside Judgment or an order ought to be exercised to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake.

40. The Respondent submits that the Applicant has not suffered any prejudice by reason of the reinstatement, and that it is only fair and just that both parties be accorded a full hearing so that the Court may arrive at a reasoned and definitive determination of the dispute.

41. On the second issue, the Respondent relies on **Patel v E.A. Cargo Handling Services Ltd [1974] EA 75**, where the Court stated that there are no limits or restrictions on the Judge's discretion except that if he does vary the Judgment he does so on such terms as may be just, and that the main concern of the Court is to do justice to the parties without imposing conditions on itself that would fetter the wide discretion given to it by the rules.

42. Furthermore, the Respondent submits that the trial Court carefully considered the reasons given by the Advocate for non-attendance and weighed the prejudice that would result from the dismissal being left to stand. Of particular concern

to the Respondent is the further fact that immediately after the dismissal of the suit on the 4/10/2024, the Applicant on the 10/10/2024 invaded the suit property with what the Respondent describes as a group of goons and vigilantes and unceremoniously, illegally and unlawfully, and without notice, evicted the Respondent's family from the suit property in the Respondent's absence.

43. Also, the Respondent draws on the decision in **Philip Chemwolo & Mumias Sugar Co. Ltd v Augustine Kubende [1982-1988] 1 KAR**, where the Court, drawing from both **Patel v EA Cargo Handling Services [supra]** and **Shah v Mbogo [supra]**, stated that the discretion to set aside is a free one intended to be exercised to avoid injustice or hardship but not to assist a person guilty of deliberate conduct intended to obstruct or delay the course of justice, and that the discretion being a judicial one must be exercised upon facts and not on whims and caprice. The Court in that case further observed, through the words of Apaloo JA (as he then was), that blunders will continue to be made from time to time and it does not follow that because a mistake has been made a party should suffer the penalty of not having his case heard on its merits.

44. Therefore, the Respondent submits that by reinstating the suit the trial Court was doing no more than observing the rules of natural justice so as to ensure that the Respondent is not condemned unheard and does not suffer a miscarriage

of justice brought about by the conduct of the Advocate rather than by any fault of his own.

45. On the third issue, the Respondent submits that the Court has been clothed with immense powers under Section 3A of the Civil Procedure Act to make orders necessary for the ends of justice, including the reinstatement of a suit that has been dismissed, and that it would run contrary to every principle of justice to shut the Respondent out from the seat of justice without affording the trial Court an opportunity to render a substantive determination of the matter on its merits. The Respondent urges that the appeal is devoid of merit and ought to be dismissed with costs.

46. The Respondent concludes by urging this Honourable Court not to interfere with the exercise of discretionary powers by the learned trial Magistrate in **Ruiru MCELC No. E076 of 2024**, and instead to allow the matter to be determined substantively on its merits before the Subordinate Court.

Analysis and Determination

47. I have read the Application, the Replying Affidavit, and the written submissions filed by both parties. The matter before this Court is an application for stay of the Ruling and orders of the Ruiru Magistrates' Environment and Land Court delivered on 14/02/2025, as well as a stay of proceedings in **MCELC No. E076 of 2024**, pending the hearing and determination of the appeal filed herein.

48. Having considered the rival positions, the issues that commend themselves for determination are:

- i. **Whether the Applicant has demonstrated that the appeal is arguable and not frivolous,**
- ii. **Whether the appeal would be rendered nugatory in the absence of stay, and**
- iii. **Whether the balance of convenience favours the granting or refusal of the orders sought.**

49. These issues do not arise in a vacuum. They fall to be determined against a factual backdrop that has both procedural and human interventions. The Respondent filed his suit in April 2024 over a property dispute. The matter was dismissed on 4/10/2024, barely six months into its life before the trial Court, ostensibly for non-attendance. Within six days of that dismissal, on 10/10/2024, the Applicant descended upon the suit property and forcibly evicted the Respondent's family, including minor children, through what the Respondent describes as a group of hired persons acting at the Applicant's instigation. Faced with that reality, and with an application for reinstatement promptly filed on 14/10/2024, the trial Court reinstated the suit on 14/02/2025. It is that reinstatement that the Applicant now seeks to freeze.

50. On the first issue, the test for an arguable appeal is not a demanding one. The Court of Appeal in **Stanley Ng'ethe Kinyanjui v Tony Ketter & 5 Others [2015] KECA 790**

(KLR) was clear that an arguable appeal is simply one that is not frivolous and which raises a bona fide issue that ought to be fully ventilated before the Court, not necessarily one that must succeed. The Applicant's principal complaint is that the Learned Magistrate misidentified the rule under which the suit had been dismissed, treating it as a dismissal under Order 17 Rule 2(3) when in truth it had been entered under Order 12 Rule 3 for non-attendance on three separate hearing dates. That distinction, in the Applicant's submission, had a material bearing on the applicable grounds for reinstatement. That is an arguable point. This Court is not presently called upon to decide whether the Magistrate was right or wrong. It is sufficient that the point is real and capable of full argument. The first condition is met.

51. The more weighty question, however, is whether the appeal would be rendered nugatory if stay is not granted. The Applicant contends that the only matter remaining before the Subordinate Court, at the time of reinstatement, was the hearing of his undefended Counter-claim, and that the reinstatement has the effect of loading new proceedings onto an already concluded chapter. The Respondent, for his part, maintains that no prejudice has been suffered and that all matters between the parties may properly be resolved before the trial Court in a single comprehensive hearing.

52. The word nugatory has a precise legal meaning.

Black's Law Dictionary defines **nugatory** as **having no**

force, inoperative, futile, or of no effect. In the context of stay applications, the Court of Appeal in **Stanley Kang'ethe Kinyanjui (supra)** gave the term its full weight when it held that whether an appeal will be rendered nugatory depends on whether what is sought to be stayed, if allowed to happen, is reversible, and if not, whether damages would reasonably be compensated. **Halsbury's Laws of England, 4th Edition, Vol. 37,** similarly recognises that the Court must weigh the risk that a successful Appellant may find that the fruits of the appeal have been lost against the prejudice that a stay would occasion to the Respondent.

53. This Court is alive to the caution expressed by the Supreme Court of Kenya in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] KESC 30 (KLR)**, where the Court, stated that,

"An appeal will be rendered nugatory if what is sought to be stayed if allowed to proceed would be in effect irreversible. The Court must thus consider whether damages would reasonably compensate the aggrieved party should the appeal be successful."

54. The Supreme Court in that matter articulated those two conjunctive conditions with clarity, and they bear directly on the present application.

55. The nature of what is sought to be stayed here is not execution of a Decree. It is the continuation of trial

proceedings. The Respondent's suit has been reinstated and a hearing date was fixed. The Applicant says that if the Subordinate Court proceeds and delivers Judgment before the appeal herein is determined, the appeal will be academic. That argument has a certain internal logic, but it does not tell the whole story. A successful appeal against the reinstatement Ruling would, if upheld, render the Subordinate Court proceedings a nullity. That outcome, while disruptive, would not be strictly irreversible in a manner that no Court could remedy. Proceedings that are set aside leave no enduring legal consequence that cannot be undone. The fruits of the appeal would not thereby perish.

56. The position is materially different on the Respondent's side. The Respondent's family was evicted from the suit property on 10/10/2024. He currently has no possessory interest over the land in dispute. The suit he filed, the one now under appeal, is his primary avenue for seeking justice in respect of that dispossession. To freeze those proceedings is to leave the Respondent entirely without a seat of justice while the matter works its way through the appellate chain.

57. The Court of Appeal observed in **Rhoda Mukuma v John Abuoga [1988] KECA 107 (KLR)** that in exercising its discretion must be guided by the need to protect both parties from prejudice, and that the balance of convenience must lean in the direction that minimizes harm. In this matter, the harm of refusing stay is that the parties will

proceed to a hearing. The harm of granting stay is that the Respondent is shut out from the seat of justice indefinitely, dispossessed and without remedy, while the appeal runs its course.

58. This Court is also mindful of what the Court of Appeal stated in **Butt v Rent Restriction Tribunal [1982] KLR 417**, where Kneller JA observed that,

"The Court in exercising its discretion whether to grant or refuse an application for stay of proceedings must weigh the competing interests of the parties and decide which course is the most convenient and the least unjust."

59. The least unjust course in these circumstances is not to stay proceedings that may vindicate a man whose family was forcibly evicted from land, based on a procedural ground that the trial Court, exercising its judicial discretion, has already found to be insufficient reason to deny him a hearing.

60. This Court is further fortified by the words of the Court of Appeal in **Kenya Commercial Bank Ltd v Benjoh Amalgamated Ltd & Another [2017] eKLR**, where the Court restated the principle that,

"The jurisdiction to order stay of execution is discretionary and the Court must balance the need to protect the successful party's rights against the need to ensure that, if the appeal

succeeds, the Appellant is not left without a remedy."

61. The Applicant here has not demonstrated that a successful appeal would leave him without any remedy or that the Respondent's trial, if allowed to proceed, would extinguish any right that cannot be restored.

62. The application for stay of proceedings accordingly fails to satisfy the second and most critical limb of the test. The nugatory limb requires more than the theoretical possibility that the Subordinate Court may deliver judgment before the appeal is resolved. It requires the Court to be satisfied that allowing the proceedings to continue would produce a result that is practically irreversible and that damages would be inadequate. Neither of those conditions has been made out to the satisfaction of this Court.

63. Given the foregoing, the application is dismissed with costs to the Respondent. The Subordinate Court in **Ruiru MCELC No. E076 of 2024** is at liberty to proceed with the matter in accordance with its own directions. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA
VIDEOLINK THIS 4TH DAY OF MAY, 2026.**

.....
**MOGENI J
JUDGE**

In the presence of:

Mr. Ruiru for the Appellant/Applicant

Mr. Edwin Munyua - Respondent in person

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**

ORIGINAL