



**China State Construction Engineering Corporation Limited v Vijedi & Wanyonyi
(Jointly as the Legal Administrators of the Estate of Joshua Wafula Wanyonyi)
(Civil Appeal E160 of 2025) [2026] KEHC 6159 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E160 OF 2025
FN MUCHEMI, J
MAY 7, 2026**

BETWEEN

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION
LIMITED APPELLANT**

AND

**GENTRIX ANDIA VIJEDI & ELIZABETH WANJALA WANYONYI (JOINTLY
AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF JOSHUA WAFULA
WANYONYI) RESPONDENT**

RULING

Brief facts

1. The application dated 30th June 2025 seeks for orders of stay of proceedings in Gatundu CMCC No. E245 of 2024 pending the hearing and determination of the appeal.
2. In opposition to the application, the respondents filed a Replying Affidavit dated 13th July 2025.

Appellant's /Applicant's Case

3. The applicant states that on 20th May 2025, Senior Resident Magistrate in Gatundu in CMCC No. E245 of 2024 dismissed its application dated 28th January 2025 which sought for orders of striking out the suit for want of jurisdiction since the matter had already been settled following an assessment and award to the respondents by the Director of Occupational Safety and Health. Being aggrieved by the said ruling, the applicant states that it lodged an appeal on the grounds that the issues raised go to the core of the subject matter of the claim.
4. The applicant argues that the Supreme Court of Kenya in Petition No. 4 of 2019 and in its interpretation of Section 16 of the Work Injury Benefit Act clearly stated that all matters under the



purview of Work Injury Benefits are legally under the mandate of the Director of Occupational Safety and Health in the first instance. The applicant argues that the claim is a work injury benefit claim which is inherently governed by specific provisions under labour and employment law and thus the lower court does not have jurisdiction to entertain such claims.

5. The applicant states that despite having settled the award by the Director of Occupational Safety and Health, the respondents sued it separately in Gatundu CMCC No. E245 of 2024 whose proceedings are still ongoing with the matter scheduled for a mention for pretrial conference on 1st July 2025. The applicant argues that if the proceedings in CMCC No. E245 of 2024 are not stayed, the Honourable Court will proceed with the matter despite its contention that it lacks jurisdiction therefore rendering its appeal nugatory. The applicant avers that its appeal has a high probability of success. The applicant states that the learned magistrate erred both in law and in fact by failing to appreciate that Section 16 as read with Section 23 of the [Work Injury Benefits Act](#) 2007 confers powers of adjudication of any claim for compensation arising from injury or death in the workplace upon the Director of Occupational Safety.

The Respondents' Case

6. The respondent states that the suit in the lower court arises from a road traffic accident involving motor vehicle registration number KCN 823Z in which the deceased sustained fatal injuries. The respondents state that the lower court in dismissing the application found that the claim before the court was based on multiple heads including general damages, liability and expectation of life. Further the compensation received through the labour office was only in respect of loss of dependency under the [Work Injury Benefits Act](#) (WIBA) and the plaintiffs are entitled to pursue other heads of compensation under the [Law Reform Act](#) and [Fatal Accidents Act](#).
7. The respondents argue that stay of proceedings is a discretionary and exceptional remedy only to be granted in the clearest of cases.
Further the applicant has failed to demonstrate any prejudice it will suffer should the orders sought are not granted.
8. The respondents further argue that the appeal does not raise novel or weighty issues as the trial court simply found that the claim involves diverse legal heads not fully covered by compensation under WIBA. The respondents state that staying proceedings will unduly delay the hearing and determination of the main suit contrary to the provisions of [the Constitution](#) which emphasizes expeditious disposal of cases.
9. The respondents state that they stand to suffer serious prejudice if the hearing of the claim is suspended indefinitely as that will deny the estate and dependents of the deceased rightful access to justice and timely compensation. The respondents further state that the issues raised in the pending appeal do not go to the core of the claim and can still be ventilated during or after the hearing of the main suit without occasioning injustice to the applicant.
10. Parties put in written submissions.

The Applicant's Submissions

11. The applicant relies on the case of *Makena vs Nalwa* (Civil Appeal E127 of 2024) [2024] KEHC 13086 (KLR) (23 October 2024) and submits that it has met the conditions for grant of stay of proceedings. The applicant submits that its appeal raises a serious and substantive question of jurisdiction which goes to the root of the proceedings before the subordinate court. The applicant further relies on Section 16 of the [Work Injury Benefits Act](#) 2007 and the case of *Law Society of Kenya vs Attorney General &*



Another Petition No. 4 of 2019 [2019] eKLR and submits that an employee's right to compensation for a work related injury lies exclusively within the statutory framework of the Act. Consequently, any proceedings before a subordinate court arising from the same injury are null and void ab initio for want of jurisdiction.

12. The applicant argues that allowing the lower court proceedings to continue will render the appeal challenging the jurisdiction of the court, nugatory. The applicant further submits that it stands to suffer substantial prejudice if stay is not granted as the respondents have already been compensated under WIBA upon assessment by the Director of Occupational Safety and Health services. Thus allowing the lower court's proceedings to continue would expose it to double compensation under the same cause of action contrary to Section 16 of WIBA. Relying on the case of Kenya Power & Lighting Company Limited vs Esther Wanjiru Wokabi [2014] KEHC 3174 (KLR), the applicant argues that the object of stay is to prevent the appeal from being rendered an exercise in futility and to safeguard parties from the hardship of enforcing a decree that may be later set aside.
13. The applicant submits that the application and appeal have been filed expeditiously as the ruling was delivered on 4th June 2025 and the instant application was filed soon thereafter.

The Respondents' Submissions

14. The respondents rely on the case of Global tours & Travels Limited Nairobi HC Winding Up Cause No. 43 of 2000 and submit that stay of proceedings ought to be granted in very exceptional circumstances. The respondents argue that in the instant case, the applicant has not demonstrated substantial prejudice that would be suffered if the suit in the lower court proceeds. The respondents further argue that the statutory compensation through WIBA partially address loss of dependency and does not bar pursuit of the other heads of damages available under the Law Reform Act and the Fatal Accidents Act.
15. The respondents submit that the applicant has not demonstrated that the appeal raises serious points of law or exceptional issues that go to the root of their claim. The respondents argue that the estate of the deceased and the dependents continue to suffer the consequences of the loss and any further delay in the proceedings through unnecessary appeals violates their right to access justice and timely compensation protected under the Constitution.
16. The respondent relies on the case of Stanley Kang'ethe Kinyanjui vs Tony Ketter, Salim Suleiman, Mawji Patel, Innocent Maisiba Toyo Deputy Registrar High Court of Kenya at Eldoret, Paul Gicheru of Gicheru & Co. Adv & Commissioner of Land [2013] KECA 378 (KLR) and submits that the applicant has not demonstrated substantial loss or exceptional circumstances to warrant stay.

The Law

Whether the applicant has met the conditions for grant of stay of proceedings pending appeal

17. It is trite law that whether or not to issue an order for stay of proceedings is a matter of the court's discretion exercised after due consideration of the merits of the case and the likely effect on the ends of justice. The exercise of that discretion should be premised on conscientious and judicious decision based on defined principles which were expounded by Ringera J in Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000:-

“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 justicethe sole question is whether it is in the interest of justice to order a



stay of proceedings and if it is so, 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.”

18. Similarly the threshold for stay of proceedings has been illuminated in the passages in Halsbury’s Law of England, 4th Edition, Vol. 37 page 330 and 332 that:-

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

19. In that regard, for an order of stay of proceedings to issue the following points of consideration ought to be adhered to:-
- a. Whether the applicant has established that he has a prima facie arguable case;
 - b. Whether the application was filed expeditiously; and
 - c. Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

Whether the applicant has established that they have a prima facie arguable case

20. Cognizant of the fact that an arguable appeal needs only raise a single bona fide point worthy of consideration by the Judge who will hear the appeal and it need not be one that must necessarily succeed. *Cooperative Bank of Kenya Ltd vs Banking Insurance of Finance Union (Kenya)* [2015] eKLR.
21. I have keenly perused the memorandum of appeal and noted that the applicant’s main contention is that the trial court does not have jurisdiction to entertain the claim as the claim was a work injury one which falls under the exclusive jurisdiction of the Director of Occupational Safety and Health Services.
22. Upon perusal of the trial court’s ruling and the reasoning thereof, the claim arose from a road traffic accident along Gatundu Mang’u road where the deceased was a lawful passenger on board the applicant’s motor vehicle registration number KCN 823Z. As such, the accident occurred outside the scope of the work place of the respondent. It is further noted that the labour office only dealt with the award on loss of dependency and not with any other head of damages. The other heads of damages include damages on pain and suffering and loss of expectation. It is trite law that the respondents are



entitled to claim the other heads of damages provided that they are not compensated twice for the same head of damage. The issues raised by the applicant are arguable and will be determined in the appeal.

Whether the application was filed expeditiously

23. The ruling was delivered on 20th May 2025 and the applicant filed the instant application on 30th June 2025 and the Memorandum of Appeal on 16th June 2025. Thus the application has been filed expeditiously.

Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought

24. In an application to stay proceedings the court is required to exercise judicial discretion in the interest of justice. This has been demonstrated in the case of Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR the court observed that:-

“.....what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”

25. The applicant states that it will suffer substantial loss and irreparable damage if the proceedings in the trial court are not stayed as the same would expose it to double compensation under the same cause of action.
26. On perusal of the impugned ruling, the trial court is clear that the labour office only compensated the respondents for the award of loss of dependency. However the respondents have also sought the court to determine if the applicant was negligent in causing the road accident and if so seeks compensation under the *Law Reform Act* and *Fatal Accidents Act*. The trial court has firmly acknowledged that the labour office has made a determination on the loss of dependency. In that regard, the court is not convinced that it would be in the best interests of justice if the proceedings in the trial court are stayed.
27. It is noted that the appeal herein is based on the ongoing proceedings in the Gatundu case. The applicant is advised to await the judgment of the court below and consider appealing against it, if need be. At this stage, it will not serve any useful purpose to stay the proceedings before the Magistrate.
28. In that regard, it is my considered view that the applicant has not shown sufficient cause to warrant stay of proceedings in Gatundu CMCC No. E245 of 2024.
29. I thus hold the opinion that the application dated 30th June 2025 lacks merit and is hereby dismissed with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 7TH DAY OF MAY 2026.

F. MUCHEMI

JUDGE

