



Energy and Petroleum Regulatory Authority v Chev Energies Limited (Miscellaneous Application E032 of 2026) [2026] KEHC 6183 (KLR) (Civ) (7 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6183 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E032 OF 2026
WA OKWANY, J
MAY 7, 2026

BETWEEN
ENERGY AND PETROLEUM REGULATORY AUTHORITY APPLICANT
AND
CHEV ENERGIES LIMITED RESPONDENT

RULING

Background

1. The dispute originated from regulatory enforcement action taken by the Applicant some time in February 2024, which included the sealing of the Respondent's Liquefied Petroleum Gas (LPG) facility in Webuye and the suspension of its operational licence for twelve months.
2. The Respondent challenged the regulator's decision before the Energy and Petroleum Tribunal, which on 26th September 2024 rendered a decision to set aside the Applicant's decision. The Tribunal also ordered for the reopening of the Respondent's facility and lifted the licence suspension.
3. The Respondent thereafter resumed operations and subsequently filed a case in EPA E021 of 2025 seeking compensation of approximately Kshs. 201,977,292.52 in respect to losses allegedly incurred following the closure of its facility.
4. The Applicant did not appeal against the Tribunal's decision within the statutory 30-day period provided under Section 37(3) of the [Energy Act](#). The Applicant later filed the application that is the subject of this ruling.



The Application

5. This ruling is in respect to the application 20th January 2026 wherein the Applicant seeks, inter alia, leave to appeal out of time against the judgment of the Energy and Petroleum Tribunal delivered on 26th September 2024 and stay of proceedings in EPA E021 of 2025 pending the hearing and determination of the intended appeal. The Application is supported by the affidavit of Daniel Kiptoo Bargoria and further supported by the Applicant's written submissions.
6. The Respondent opposed the application through the Replying Affidavit sworn by its Director Albert Makundi Muchai.
7. The application was canvassed by way of written submissions which I have considered.

The Applicant's Submissions

8. The Applicant argued that if stay is not granted, the proceedings in EPA E021 of 2025 will continue to determination based on a judgment whose validity is under challenge. It was submitted that the ongoing proceedings in EPA E021 of 2025 are anchored on the impugned judgment and that allowing the said proceedings to continue would pose the risk of parallel proceedings and duplication of judicial effort that may result in conflicting decisions. It added that conversely, if the appeal succeeds, such proceedings may be rendered futile thus resulting in wastage of judicial time and resources. Reliance was placed on the decisions in *Makena vs. Nalya* [2024] KEHC 13086 (KLR) and *Wachira Waruru & Another vs. Francis Oyatsi* [2002] EA 664, where the court emphasized that proceedings may render an appeal nugatory where execution or further processes would defeat its purpose.
9. The Applicant further contended that the Tribunal considered issues that were not pleaded, thereby condemning the Applicant unheard thus raising constitutional concerns under the right to a fair hearing. Reliance was placed on *Nine Trading Limited vs. Premier Industries Limited* [2023] KEHC 21501 (KLR), where the centrality of the right to be heard was affirmed.
10. Reference was made to several authorities including *William Odhiambo Ramogi & 2 Others vs. Attorney General* [2019] eKLR and *Wachira Waruru vs. Francis Oyatsi* [2002] EA 664 where the principles governing stay of proceedings were outlined as; the including existence of an appeal or intended appeal; demonstration of substantial or arguable issues; risk of the appeal being rendered nugatory; presence of exceptional circumstances and prompt filing of the application.
11. The Applicant contended that the intended appeal is properly before the Court through the present Application for leave and that the prayer for stay is made before the "higher court" as required. It added that the Application was filed without undue delay.
12. The Applicant also invoked public interest, arguing that it is the statutory regulator of a high-risk sector (LPG) and that the Tribunal's decision impacts on its enforcement mandate under Sections 10 and 11 of the *Energy Act*. The Applicant added that exposure to liability exceeding Kshs. 201 million implicates public funds and that failure to intervene may undermine regulatory oversight and safety standards.
13. The Applicant submitted that it will suffer prejudice if it is compelled to defend proceedings that are based on a contested judgment and that the Respondent will suffer no undue prejudice or irreparable harm, as its claim remains intact and can be pursued after determination of the appeal. According to the Applicant, any prejudice to the Respondent is compensable in damages.



14. The Applicant acknowledged that under Section 37(3) of the *Energy Act*, appeals ought to be filed within 30 days, and that the statutory period lapsed on 27th October 2024. It attributed the delay in filing the appeal and application to several factors including an unprecedented surge in regulatory and litigation matters, the aftermath of the Embakasi LPG explosion of 1st February 2024 which triggered nationwide enforcement and safety audits of LPG facilities, deployment of legal and technical teams to urgent public safety matters, institutional processes involving consultations, audits, and policy reforms; and administrative and procedural steps necessary before sanctioning an appeal.
15. The Applicant submitted that the delay is not inordinate in context, given the magnitude of regulatory obligations and that courts have recognized institutional and administrative delays as sufficient cause to warrant extension of time. The Applicant stated that upon realization of the lapse, it acted promptly by filing the instant application. Reliance was placed on several authorities including the cases of *Maina vs. Riara Downs Management PLC* [2025] KEELRC 7313 (KLR) and *Almas Hauliers Ltd vs. Abdulnasir Abukar Hassan* [2017] eKLR.
16. On arguability of the intended appeal, it was submitted that the appeal raises substantial questions of law including whether the Tribunal exceeded its jurisdiction under Section 24 of the *Energy Act*, whether it determined issues not pleaded, whether it improperly shifted the burden of proof, whether it misapprehended evidence and whether it violated the Applicant's right to a fair hearing.
17. The Applicant emphasized that the draft Memorandum of Appeal raises multiple substantive grounds and issues that go to the root of the legality and validity of the Tribunal's decision.
18. On representation, the Applicant argued that the law firm of Prof. Tom Ojienda & Associates is properly on record as the Appellate proceedings are distinct and do not require compliance with Order 9 Rule 9 of the Civil Procedure Rules.

The Respondent's Submissions

19. The Respondent submitted that the Applicant's delay of over 14 months is inordinate and unexplained. It added that the explanation for the delay is vague and generalized considering that the Applicant had sufficient legal capacity, including in-house and external advocates who could have acted on the matter in good time.
20. The Respondent contended that the statutory timelines under Section 79G of the *Civil Procedure Act* and Section 37(3) of the *Energy Act* must be respected. It added that no sufficient cause has been demonstrated.
21. It was submitted that the Applicant acted arbitrarily in sealing the Respondent's facility as no reasons or inventory were provided at the time of closure. According to the Respondent, the enforcement process undertaken by the Applicant was procedurally unfair.
22. The Respondent relied on the Tribunal's decision, arguing that it was lawfully reached and has already been implemented since the Respondent resumed operations based on the said decision. According to the Respondent, the appeal has been overtaken by events.
23. The Respondent contended that the application is a tactical manoeuvre intended to delay its compensation claim considering that it was only filed after the Respondent demanded damages. The Respondent's case was that the reasons advanced for the delay are a "smokescreen".
24. On stay of proceedings, the Respondent argued that the Applicant has not shown exceptional circumstances or that the proceedings are frivolous or that the appeal will be rendered nugatory.



25. It was the Respondent's case that the claim before the Tribunal is independent and valid.
26. On prejudice, it was submitted that the Respondent suffered significant financial losses following the closure of its facility and has since reorganized its operations. According to the Respondent, granting stay would delay compensation, reintroduce uncertainty and undermine its business stability.
27. The Respondent emphasized that extension of time is discretionary, requires good and sufficient cause and is granted only in exceptional circumstances. According to the Respondent, the Applicant has not met the threshold for the granting of stay of proceedings. The Respondent argued that the Application is incompetent, unmeritorious, and an abuse of process.

Issues for Determination

28. After carefully considering the pleadings and the rival submissions, I find that the following issues arise for determination:
 - a. Whether the law firm of Prof. Tom Ojienda & Associates Advocates are properly on record.
 - b. Whether the Applicant has established sufficient cause to warrant leave to appeal out of time.
 - c. Whether the intended appeal is arguable.
 - d. Whether the Applicant has met the threshold for grant of stay of proceedings in EPA E021 of 2025.
 - e. Whether the Application was filed without undue delay.

Analysis and Determination

Representation by Prof. Tom Ojienda & Associates

29. The Applicant raise the issue of representation by contending that the firm of Prof. Tom Ojienda & Associates is properly on record as the present proceedings are appellate in nature and therefore distinct from the proceedings before the Tribunal.

Order 9 Rule 9 of the Civil Procedure Rules, provides that:

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court— (a) upon an application with notice to all the parties; or (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person.”

30. The purpose of Order 9 Rule 9 is to protect advocates from being improperly removed after judgment, ensure orderly conduct of proceedings and prevent abuse of process.
31. Jurisprudence has however consistently distinguished between continuation of the same proceedings after judgment, where compliance with Order 9 Rule 9 is mandatory; and fresh or appellate proceedings, which are treated as independent proceedings.
32. In this matter, I note that the impugned decision was rendered by the Energy and Petroleum Tribunal and the present application seeking leave to appeal and stay has been filed before the High Court. I find that these proceedings are therefore not a continuation of the Tribunal proceedings, but rather new proceedings invoking the appellate jurisdiction of this Court.



33. I find that the instant application constitutes fresh proceedings before a different forum and that Order 9 Rule 9 of the Civil Procedure Rules does not apply to appellate or separate proceedings.
34. Consequently, I find that the firm of Prof. Tom Ojienda & Associates is properly on record for the Applicant.
35. On leave to appeal out of time, Section 37(3) of the *Energy Act* provides that a person aggrieved by a decision of the Tribunal may appeal to the High Court within thirty days of the decision.
36. Section 79G of the *Civil Procedure Act*, on the other hand, provides as follows:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days... Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
37. In *Almas Hauliers Ltd vs. Abdulnasir Abukar Hassan* [2017] eKLR it was held that that extension of time is not a right of a party but is an equitable remedy that is only available to a deserving party, at the discretion of the court.
38. In *Maina vs. Riara Downs Management PLC* (supra) it was held that an applicant for leave to appeal out of time must satisfactorily explain the delay and demonstrate that the delay is not inordinate.
39. In *William Odhiambo Ramogi & 2 Others vs. Attorney General* (supra) the Court held:

“Stay of proceedings is a grave judicial action which interferes with the right of a litigant to conduct his case... and should only be granted in exceptional circumstances.”
40. Further, in *Wachira Waruru & Another vs. Francis Oyatsi* (supra) it was held that the court must weigh the pros and cons of granting or refusing the order bearing in mind the need for expeditious disposal of cases.
41. In the present case, I note that the Tribunal decision was delivered on 26th September 2024 and the present application filed on 20th January 2026, a delay of approximately 14 months. The Applicant attributed the delay to several factors including; the aftermath of the Embakasi LPG explosion, national regulatory enforcement obligations and institutional administrative processes.
42. While this Court acknowledges the Applicant’s statutory mandate and public safety obligations, I find that the explanation it advanced for the delay is generalized and not specific to the delay in this particular matter. The Applicant has not explained the nexus between the alleged Embakasi LPG explosion, the ongoing court proceedings and the need to comply with the statutory timelines. This court takes judicial notice of the fact that the Applicant is a well-resourced statutory body with sufficient legal capacity to effectively pursue proceedings before any court or Tribunal. I further note that no material was placed before this court to show the magnitude of the alleged LPG explosion and its effect on the Applicant’s operations specifically as concerns ongoing court proceedings.
43. It is my finding that a delay of 14 months, in the absence of a specific, cogent, and case-focused explanation, is inordinate.
44. The Court underscores that discretion to extend time must be exercised judiciously and cannot be invoked to cure inaction or delay unsupported by sufficient cause, even where public interest is asserted.



45. On the arguability of the appeal, I note that the draft grounds of appeal raise several issues including jurisdiction of the Tribunal, alleged determination of unpleaded issues and alleged violation of the right to be heard.
46. It is trite that the right to be heard is fundamental and cannot be compromised. (See *Nine Trading Limited vs. Premier Industries Limited* (supra).
47. Looking at the grounds contained in the draft Memorandum of Appeal, I am satisfied that the intended appeal is arguable, though not necessarily meritorious.
48. Turning to the issue of whether the prayer for stay of proceedings should be allowed, the Applicant argued that the Tribunal proceedings for compensation are anchored on the impugned judgment. It was however not disputed that the Tribunal decision has already been implemented and the Respondent has resumed operations. This court also notes that the compensation case that the Applicant seeks to stay is a compensation claim that is a distinct proceeding arising from the Applicant's act of sealing the Respondent's plant.
49. I find that, in the circumstances of this case, no exceptional circumstances have been demonstrated to warrant stay of proceedings. My view is that the Applicant's intended appeal, if successful, will not necessarily be rendered nugatory as there is no guarantee that the Respondent's pending case, which is a liquidated claim, will be successful. Furthermore, even assuming, for argument's sake, that the Respondent's case succeeds and the claimed amount is paid out only for the Applicant to succeed on its appeal, the money may still be refunded to the Applicant. On the flipside, it is the Respondent who would suffer prejudice through delay in pursuing compensation.
50. I find that the Applicant has not met the threshold for stay and that no exceptional circumstances exist in this matter. It is my view that the discretionary reliefs sought cannot be granted in the absence of a satisfactory explanation for delay and proof of exceptional circumstances.
51. Having regard to the findings and observations that I have made in this ruling, I find that the instant application is not merited and I therefore dismiss it with costs to the Respondent.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MAY 2026.

HON W. A. OKWANY

JUDGE

In the presence of

Adoyo for Ms Awuor for Applicant

Makhanu for Respondent

Abdirzak - Court Assistant

