



- i. That this Honourable Court be pleased to issue an order of stay of further proceedings in ELC Case No. E010 of 2023, pending the hearing and determination of the Applicant's application for stay of proceedings under Rule 5(2)(b) of the Court of Appeal Rules.*
  - ii. That this Honourable Court be pleased to issue an order of stay of further proceedings in ELC Case No. E010 of 2023, pending the hearing and determination of the Applicant's intended appeal against the rulings and orders delivered on 22<sup>nd</sup> April 2024 and 29<sup>th</sup> May 2025.*
  - iii. That this Honourable Court be pleased to make such further or other orders as may be just and expedient in the circumstances of this case.*
2. The Motion is supported by the affidavit of Abdiweli Aden Duntow, the 1<sup>st</sup> Defendant/Applicant of an even date. He deponed that on 22<sup>nd</sup> April 2024, this court delivered a ruling finding him guilty of contempt of court for allegedly disobeying status quo orders issued on 23<sup>rd</sup> October 2023.
3. Dissatisfied with that finding, he filed a notice of motion dated 29<sup>th</sup> September, 2024 seeking review and setting aside of the said ruling on the basis that sufficient grounds existed to warrant review, and that subsequently, on 29<sup>th</sup> May 2025, this court delivered a ruling dismissing the

application for review, thereby affirming and upholding the finding of contempt made on 22<sup>nd</sup> April, 2024.

4. Mr Duntow deponed that he has since filed a notice of appeal and intends to pursue a substantive appeal before the Court of Appeal challenging the finding of contempt; that he has also moved the Court of Appeal seeking stay of the proceedings pending the hearing and determination of the intended appeal and that if the proceedings are allowed to continue during the pendency of the appeal, there is a real risk of irreversible miscarriage of justice.
5. In his view, the imposition of any sanctions at this stage would be both premature and potentially disproportionate, given that the appellate court has not yet had the opportunity to determine the propriety of the contempt finding.
6. He further contends that, unless enforcement of the sanctions is stayed pending appeal, he stands to suffer irreparable harm, as the orders issued by the court are likely to adversely affect both his liberty and financial position before the appeal is heard and determined.
7. As advised by counsel, he explained, an order for stay would merely preserve the status quo pending the determination of the appeal and would occasion no prejudice to the proceedings herein. On the other hand, refusal to grant a stay would expose him to severe and irretrievable prejudice,

including the real possibility of being wrongly committed to civil jail for contempt.

- 8.** The 2<sup>nd</sup> Plaintiff, David Waweru Gakuya, on his own behalf and on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs/Respondents swore a replying affidavit on 15<sup>th</sup> October, 2025. He deposed that the application is misconceived, frivolous and vexatious, and amounts to a blatant abuse of the court process. In his view, it has been brought solely to frustrate, delay and defeat the expeditious determination of the matter offending the principles of finality, good faith and judicial economy.
- 9.** He explained that this matter arose from the unlawful interference and trespass by the 1<sup>st</sup> Defendant on plot no. 36/VII/344, Nairobi, in total disregard of subsisting court orders and that on 23<sup>rd</sup> October 2023, the court issued status quo orders restraining any interference or development on the suit property pending determination of the suit.
- 10.** Despite the said clear orders, it was deposed that the 1<sup>st</sup> Defendant unlawfully proceeded with construction works and demolition of existing structures, prompting the court to issue further enforcement orders and ultimately a finding of contempt against him.
- 11.** According to the Plaintiff, instead of purging his contempt, the 1<sup>st</sup> Defendant filed an application for review of the said ruling on 26<sup>th</sup> April 2024, citing alleged new evidence,

specifically an irregular order of the Business Premises Rent Tribunal (BPRT) issued on 31<sup>st</sup> July 2023 by Hon. Chege Gakuhi and that in its decision of 29<sup>th</sup> May 2025, this court dismissed the said review application, terming it misleading and an abuse of the court process.

- 12.** Undeterred, it was deposed, the 1<sup>st</sup> Defendant has now filed yet another application for stay of proceedings whose substance is identical to his earlier stay application filed before the Court of Appeal and that this amounts to forum shopping and multiplicity of proceedings, both of which are strongly discouraged and frowned upon by law.
- 13.** As advised by Counsel, Mr Gakuya stated, stay of proceedings is a grave judicial action, and courts exercise this discretion only in the clearest and most deserving of cases, where an applicant satisfies the twin limbs that the intended appeal raises bona fide and arguable issues, and the refusal of stay would render the appeal nugatory.
- 14.** In this case, it was urged, the threshold has not been met and that the Motion is replete with vague and general assertions of substantial loss without any cogent demonstration of actual prejudice he stands to suffer.
- 15.** It was deposed that in contrast, the Plaintiffs stand to suffer substantial prejudice if a stay is granted; that the 1<sup>st</sup> Defendant has continued with construction works on the suit property in disregard of subsisting court orders and

that granting a stay in those circumstances would only serve to embolden further violations under the guise of interim protection, to the detriment of the Plaintiffs.

16. The 3<sup>rd</sup> Defendant filed grounds of opposition dated 14<sup>th</sup> October, 2025 contending that the application is frivolous, mala fide and an abuse of the court process whose sole purpose is to derail the hearing of the suit and delay the pending sentencing arising from the finding of contempt. The application proceeded by way of written submissions.
17. It was averred that, as stated in **Halsbury's Laws of England, 4th Edition, Vol. 37** at page 330, a stay of proceedings constitutes a serious, grave and fundamental interruption of a party's right to prosecute his case to trial on its substantive merits, and should therefore not be granted lightly.
18. According to the 3<sup>rd</sup> Defendant, the court's discretion in deciding whether or not to grant a stay of proceedings must be guided by whether an applicant has established a prima facie arguable case; the application was filed expeditiously; sufficient cause has been demonstrated to the satisfaction of the court, and the interests of justice warrant the grant thereof. [***Kenya Wildlife Service vs James Mutembei [2019] eKLR, Kenya Power & Lighting Company Limited vs Esther Wanjiru Wokabi [2014] eKLR,***

**Samvir Trustee Limited vs Guardian Bank Limited  
Nairobi (Milimani) HCCC 795 of 1997].**

19. It was noted that guided by the exposition in **William Odhiambo Ramogi & 2 others vs the Honourable Attorney General & 3 others [2019] eKLR, Kenya Shell Limited vs Benjamin Karuga Kibiru & another [1986] eKLR; Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000); David Morton Silverstein vs Atsango Chesoni [2002] eKLR**, an applicant seeking stay of proceedings pending appeal must demonstrate that there is a pending appeal and explain why the stay has been sought before the trial court rather than the appellate court,
20. Further, that they are obligated to show that the appeal is arguable and raises substantial questions, establish that the appeal would be rendered nugatory absent a stay, demonstrate exceptional circumstances warranting interruption of the trial process, and show that the application was made expeditiously and without delay.
21. The 1<sup>st</sup> Defendant filed a further affidavit on 30<sup>th</sup> August 2025, in which he reiterated the matters deponed in support of the motion. He maintained that he is the registered owner and current occupant of the suit premises known as Nairobi Block 50/627 (formerly L.R. No. 36/VII/344,

Eastleigh), having lawfully acquired the same and remained in continuous possession thereof.

22. He explained that the present motion seeks primarily to preserve the status quo pending the hearing and determination of his application for stay of proceedings filed under **Rule 5(2)(b)** of the **Court of Appeal Rules** and that on 24<sup>th</sup> July 2025, the Court of Appeal certified his application as urgent and gave directions for its expeditious hearing and disposal.
23. In his view, the present application complements the process already pending before the Court of Appeal and merely seeks to preserve the integrity of the appellate process by staying the proceedings before this court until the appeal is heard and determined.

### **Submissions**

24. The 1<sup>st</sup> Defendant filed submissions on 24<sup>th</sup> October 2025. Counsel submitted that the principles governing stay of proceedings are distinct from those applicable to stay of execution. Reliance was placed on **Turbo Highway Eldoret Ltd vs Muniu (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR)** where the court adopted the principles set out in **William Odhiambo Ramogi & 2 Others vs The Honourable Attorney General & 3 Others [2019] eKLR.**

25. According to those decisions, an applicant seeking a stay of proceedings must demonstrate, first, that there is a pending appeal before a higher court and that where the stay is sought before the trial court rather than the appellate court, the applicant must also provide a satisfactory explanation for doing so.
26. Further, it was submitted that the applicant must show that the intended appeal is arguable and raises substantial questions; that it would be rendered nugatory if a stay is not granted and that exceptional circumstances exist to justify interruption of the proceedings, and that the application has been brought promptly and without undue delay.
27. On the first requirement, counsel submitted that the 1<sup>st</sup> Defendant had already lodged an appeal against the impugned rulings on contempt and review. On the second requirement, it was argued that as the prejudice sought to be averted, namely committal to civil jail, arose directly from proceedings before this court, it is procedurally appropriate for this court, being fully seized of the matter and familiar with the proceedings, to consider whether to pause its own coercive process pending appeal.
28. On arguability, counsel cited ***Lucy Njoki Waithaka vs The Judicial Service Commission & 4 others 2021] eKLR*** where the court held that an arguable appeal is not one that must necessarily succeed, but one that ought to be fully

argued before the court. In this case the intended appeal raises substantial questions, including whether the court erred in finding contempt for actions allegedly undertaken in compliance with a lawful order of the Business Premises Rent Tribunal, and whether a clerical error in a tribunal order invalidated its legality.

- 29.** On whether the appeal would be rendered nugatory, counsel submitted that the 1<sup>st</sup> Defendant faces the imminent risk of being committed to custody; that this threat of deprivation of property constitutes an exceptional circumstance implicating **Articles 25(a)** and **29** of the **Constitution**. Cited in support was **William Odhiambo Ramogi vs Attorney General & 4 Others [2020] eKLR** and **Kenya Power & Lighting Co. Ltd vs Esther Wanjiru Wokabi [2020] eKLR**.
- 30.** The Plaintiffs'/Respondents' counsel filed submissions on 28<sup>th</sup> October 2025. Counsel submitted the court's jurisdiction must be exercised in accordance with the overriding objectives under **Sections 1A** and **1B** of the **Civil Procedure Act**, which require the just, expeditious, proportionate and affordable resolution of disputes, while **Section 3A** preserves the court's inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.

- 31.** The power to stay proceedings, it was stated ought to be exercised sparingly and only in the clearest of cases, lest it undermine the right of parties to have their disputes heard on the merits. Cited in support was *Kenya Wildlife Service vs James Mutembei [2019] eKLR*, and *Global Tours & Travels Ltd (HC Winding Up Cause No. 43 of 2000) as cited in Rong'o vs Mutua & another [2025] KEELC 6456 (KLR)*.
- 32.** Counsel further submitted that, under **Order 42 Rule 6** of the **Civil Procedure Rules**, an applicant for stay must demonstrate that the application was filed without undue delay, that substantial loss may result unless the stay is granted, and that the applicant is ready to furnish security for the due performance of the decree. None of the foregoing was demonstrated herein.
- 33.** As expressed in *Pan African Insurance Co. Ltd vs International Air Transport Association No 86 of 2006* cited in *Gianfranco Manenthi & another vs Africa Merchant Assurance Company Ltd [2019] KEHC 7586 (KLR)*, it was submitted, an applicant must do more than make vague assertions of substantial loss and must lay a proper basis upon which the court can conclude that substantial loss will in fact be suffered.
- 34.** It was submitted that it has not been demonstrated that the continuation of the proceedings will render the intended

appeal nugatory, particularly as no irreversible order had been made.

35. Counsel argued that, on the contrary, it is the Plaintiffs who continue to suffer prejudice, as the 1<sup>st</sup> Defendant remains in unlawful possession of the suit property, continues to disobey court orders, and is still developing and profiting from the property while the Plaintiffs have been denied the use and enjoyment of their land. Reliance was placed on **African Safari Club Limited vs Safe Rentals Limited [2010] KECA 270 (KLR)**.
36. Counsel submitted that the hardship alleged by the 1<sup>st</sup> Defendant was self-inflicted through deliberate disobedience of court orders, whereas the Plaintiffs continued to suffer irreparable harm through deprivation of their property rights.
37. Counsel further relied on **M/S Karsan Ramji & Sons Limited vs Athumani & another (Suing for and on behalf of the Wamwanyundo Clan & 6 others [2024] KECA 563 (KLR)**, for the proposition that stay of proceedings is an equitable remedy available only to a party who comes to court with clean hands.
38. According to counsel, the 1<sup>st</sup> Defendant's repeated acts of contempt, forum shopping, and abuse of the court process disentitle him to the equitable discretion of the court and that the multiplicity of applications he has filed since 2023

has served only to stall the progress of the suit, thereby undermining the overriding objective under **Sections 1A** and **1B** of the **Civil Procedure Act**.

- 39.** Counsel further pointed out that a parallel application for stay is presently pending before the Court of Appeal in **Civil Application No. E437 of 2025**, thereby rendering the present application duplicative and indicative of forum shopping. It was accordingly urged that the 1<sup>st</sup> Defendant, having approached the court with unclean hands, is undeserving of the discretionary reliefs sought.

**Analysis and Determination**

- 40.** Having considered the pleadings and submissions, the sole issue that arise for determination is whether the 1<sup>st</sup> Defendant/Applicant has satisfactorily demonstrated the conditions warranting the grant of stay of proceedings pending appeal?
- 41.** The power of this court to grant an order for stay of proceedings pending appeal, and its attendant jurisdiction in that regard, is anchored in **Order 42 Rule 6** of the **Civil Procedure Rules** and reinforced by the inherent jurisdiction of the Court preserved under **Section 3A** of the **Civil Procedure Act**.
- 42.** The general principles guiding the court when invited to stay proceedings are well captured in **Halsbury's Law of**

England, 4th Edition, Vol 37 at pages 330 and 332 as follows:

***“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.”***

43. This position was affirmed in **Ferdinand Ndung’u Waititu vs Independent Electoral & Boundaries Commission (IEBC) & 8 others [2013] eKLR** as follows:

***“A stay of proceedings involves arresting or stopping proceedings. It is a tool used to suspend proceedings to await the action of one of the parties in regard to some step or some act (see Black’s Law Dictionary). This implies that the rationale for stay is the pendency of an act or step either required by the court or sought by a party. It may be grounded on a statutory provision or on the need of a party and based on a plea for the plenary exercise of the court’s discretion.”***

44. Further still, with regard to the prayer for stay in respect of a decision arising from an application now intended to be

appealed, the court in **Turbo Highway Eldoret Ltd vs Muniu (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling)** stated as follows:

***“18. In William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others [2019] eKLR, a 5-judge Bench of the High Court, after looking at our jurisprudential can on the question of stay of proceedings, authoritatively laid out the principles our Courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court. See: Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR; Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000); David Morton Silverstein v Atsango Chesoni [2002] eKLR: They laid down the following six principles: a. First, there must be an appeal pending before the higher Court; b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the***

***potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly; c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable; d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted; e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.”***

45. Guided by the foregoing authorities, this court turns to the circumstances of the present case. The 1<sup>st</sup> Defendant seeks a stay of proceedings principally on the basis that he has lodged an intended appeal against this court’s rulings of 22<sup>nd</sup> April 2024 and 29<sup>th</sup> May 2025, which found him in

contempt and dismissed his subsequent application for review.

- 46.** It is his contention that unless further proceedings, including mitigation and sentencing, are stayed pending appeal, he risks being committed to civil jail before the Court of Appeal has had an opportunity to determine the propriety of the contempt finding and the review ruling. He therefore urges that the stay is necessary to preserve his liberty and prevent the intended appeal from being rendered nugatory.
- 47.** In response, the Plaintiff and the 3<sup>rd</sup> Defendant urge that this motion is an abuse of the court process, merely intended to delay and obstruct the expeditious determination of the suit. They contend that the 1<sup>st</sup> Defendant has persistently engaged in forum shopping by pursuing parallel reliefs before this Court and the Court of Appeal, where a similar application for stay is already pending, and that the present motion is therefore duplicative and unwarranted.
- 48.** It was further argued that the 1<sup>st</sup> Defendant's continued disobedience of court orders and the multiplicity of applications he has filed since 2023 disentitle him to the equitable relief sought, particularly as his conduct demonstrates a clear pattern of delay and disregard for the authority of the court.

49. Before considering whether the 1<sup>st</sup> Defendant has satisfied the substantive threshold for stay of proceedings, it is necessary to determine whether this court can properly entertain the present request in the circumstances of this case.
50. The material before the court shows that the 1<sup>st</sup> Defendant has already moved the Court of Appeal by filing an application for stay of proceedings under **Rule 5(2)(b)** of the **Court of Appeal Rules**. The rule provides thus:

*“Suspension of sentence, injunction, stay of execution and stay of proceedings.*

*Subject to subrule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may—(a)in any criminal proceedings where a notice of appeal has been given in accordance with rule 61, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal; or(b)in any civil proceedings where a notice of appeal has been lodged in accordance with rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.”*

51. Indeed, the 1<sup>st</sup> Defendant deponed that the Court of Appeal certified that application urgent on 24<sup>th</sup> July 2025 and gave directions as follows:

***“I have been directed to inform you that the application dated 24<sup>th</sup> June 2025 has been certified as urgent by the duty Judge. I have been directed to inform you that this application will be heard by a Three [3] Judge Bench constituted by the Hon. President of the Court of Appeal. The application will be heard by way of VIDEOLINK connected to the Court and Counsel on record. In this regard, the applicant(s) is directed to serve the application on the respondent(s) within two (2) days effective today. The respondent(s) to file and serve a replying affidavit on the applicant(s) within two (2) days upon receipt of the application. The applicant to file and serve a reply on receipt of the replying affidavit within two (2) days (if any). The applicant will thereafter file and serve online written submissions limited to three (3) pages only within three (3) days at the close of pleadings.”***

52. In essence, the question whether these proceedings ought to be stayed pending the determination of the appeal is already live and actively before the Court of Appeal. The 1<sup>st</sup>

Defendant has duly invoked the appellate court's jurisdiction, and that court has since taken concrete steps to ensure the expeditious hearing and determination of the application.

53. As to whether this court can simultaneously entertain a similar prayer for stay of proceedings, it is of the considered view that it cannot. Once a party elects to move the Court of Appeal for stay, that court becomes properly seized of the issue. Should this court entertain this plea, it would risk encroaching upon the appellate court's jurisdiction and invite parallel determinations on the same question.
54. Similarly, this court is not persuaded that it should grant a stay of proceedings pending the determination of the application for stay pending before the Court of Appeal. Such a relief, is in essence, interim in nature, and falls within the province of the Court of Appeal once properly moved under **Rule 5(2)(b)**.
55. In the premises, the court finds that the application dated 9<sup>th</sup> July, 2025 is devoid of merit. The application is dismissed with costs.

**Dated, signed and delivered virtually in Nairobi this 14<sup>th</sup> day of May, 2026.**

**O. A. Angote**

## **Judge**

### **In the presence of:**

Mr. Mutua for Mr. Ndeda for Plaintiffs

Mr. Bashir for 1<sup>st</sup> Defendant

Mr. Allan Kamau for 3<sup>rd</sup> Defendant

Court Assistant: Tracy

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