



**Milestone Games Limited v Consumer Federation of Kenya & 7 others (Civil Application E717 of 2024) [2025] KECA 453 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 453 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E717 OF 2024  
SG KAIRU, FA OCHIENG & AO MUCHELULE, JJA  
MARCH 7, 2025**

**BETWEEN**

**MILESTONE GAMES LIMITED ..... APPLICANT**

**AND**

**CONSUMER FEDERATION OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**BETTING CONTROL AND LICENSING BOARD ..... 2<sup>ND</sup> RESPONDENT**

**COMMUNICATION AUTHORITY OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF INFORMATION COMMUNICATION  
AND THE DIGITAL ECONOMY ..... 5<sup>TH</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY ..... 6<sup>TH</sup> RESPONDENT**

**OFFICE OF THE DATA PROTECTION AUTHORITY ..... 7<sup>TH</sup> RESPONDENT**

**COMPETITION AUTHORITY OF KENYA ..... 8<sup>TH</sup> RESPONDENT**

*(Being an application for the stay of proceedings in HCCHRPET  
E307 of 2023 against the ruling and order of the High Court (L.  
Mugambi, J) dated 4th October 2024 in HCCHRPET/E307 OF 2023)*

**RULING**

1. In an application dated 18<sup>th</sup> January 2024, the applicant, Milestone Games Limited, sought to be joined as an interested party in the proceedings that were going on in the Constitutional and Human Rights Division of the High Court at Nairobi. In the proceedings, the 1<sup>st</sup> respondent, Consumer Federation of Kenya, had filed a petition against the 2<sup>nd</sup> respondent, Betting Control and Licensing Board,



the 3<sup>rd</sup> respondent, Communication Authority of Kenya, and the 4<sup>th</sup> respondent, the Honorable the Attorney General, with the Cabinet Secretary, Ministry of Information and Communication and Digital Economy, Kenya Revenue Authority, Office of the Data Protection Commissioner and Competition Authority of Kenya, being interested parties.

2. At the interlocutory stage, the proceedings had resulted in a consent order entered into on 16<sup>th</sup> January 2024 in which the 2<sup>nd</sup> respondent was to enforce its directives dated 11<sup>th</sup> August 2023 by requiring all gaming operators to cease using the speed dial advertising feature forthwith. The 2<sup>nd</sup> respondent had issued a circular banning the use of speed dial on all internet browsers. The 1<sup>st</sup> respondent had filed the petition to challenge the letter and its contents.
3. The applicant became aware of the petition and the consent order, and that is when it filed the application dated 18<sup>th</sup> January 2024, seeking the stay of the execution of the consent order; that the order be set aside; and that it be enjoined in the proceedings as an interested party to be able to defend its interest in the petition. The application was heard by the learned Justice L.N. Mugambi who dismissed it on 4<sup>th</sup> October 2024. It was found that the applicant was not a party to the proceedings and had no role in the consent order; and that it had not proved a legal stake to entitle it to participate in the proceedings; and, therefore, lacked legal capacity to set aside the consent order.
4. It is the ruling of 4<sup>th</sup> October 2024 that aggrieved the applicant which, as a result, filed a notice of appeal dated 17<sup>th</sup> October 2024 and subsequently filed the present application dated 19<sup>th</sup> December 2024 seeking the stay of further proceedings in the petition to allow it to have its intended appeal heard and determined. Its case is that the intended appeal will decide whether it had placed sufficient material before the trial court to show that it had an identifiable legal stake in the proceedings; that the consent order was going to affect it and its business; and that the entry of the consent order will affect its right to a hearing before any orders are issued affecting it. Further, the applicant contended that if the application is not allowed, the proceedings will go ahead without it being afforded an opportunity to participate in the said proceedings, with a view to safeguard its legal rights.
5. The application was opposed by the 3<sup>rd</sup> respondent through the replying affidavit sworn by its Director General, David Mugonyi. It was stated that the applicant had not demonstrated in the trial court that it had any identifiable legal stake in the dispute or consent. The deponent, however, went on to state that it did not then, and now, object to the applicant's quest to be joined and heard in the dispute.
6. Learned counsel Mr. Willis Otieno addressed us during the virtual hearing. It was his argument that the trial court had erred by denying the applicant the opportunity to be enjoined in the proceedings when it was clear that the applicant is in the business subject of the consent order; that the consent order was going to affect it without being afforded a hearing; and that its constitutional right to a fair hearing was being compromised. On the question of joinder, learned counsel referred us to the decision in Pravin Bowry -vs- John Ward & Another [2015]eKLR on the principles applicable when dealing with the question of joinder, and submitted that the trial court had erred in not finding that the applicant was entitled to be joined in the proceedings after it had shown that its rights were going to be affected by the consent order. To learned counsel, the intended appeal raised substantial issues to be determined.
7. Learned counsel, Mr. Kinyanjui for the 1<sup>st</sup> respondent, in opposing the application, submitted that the applicant had not shown that it had an arguable appeal and neither had it shown that, if the proceedings were not stayed, the appeal would be rendered nugatory. Learned counsel continued that, there were other 100 or so companies that had received the directions communicated by the letter dated 11<sup>th</sup> August 2023 and that the applicant, being one of them, had failed to prove an identifiable legal stake in the petition and consent order.



8. We have considered the application, the response and the rival submissions. We are not presently dealing with the appeal and therefore shall not make any definitive observations on the matters in question. All that we are concerned with is whether the applicant has demonstrated that the appeal is arguable, even on one point only, and whether, if stay of the proceedings is not granted, the applicant’s appeal may be rendered nugatory. (See Stanley Kang’ethe Kinyanjui -vs- Tony Keter & 5 Others [2013]eKLR).
9. We further bear in mind that, staying of proceedings is a serious action that can impact on a litigant’s right to a fair hearing, and to the right to the expeditious disposal of his matter. (See Kenya Wildlife Service -vs- James Mutembei [2019]eKLR). It is only in exceptional instances that this Court will stay proceedings going on in the trial court. There has to be sufficient cause, and it should be clear that the applicant does not merely want to delay or obstruct justice.
10. We have looked at the grounds in the draft memorandum of appeal, and considered the admission that the applicant is one of the 100 or so players in the gaming industry to whom the letter of 11<sup>th</sup> August 2023 was addressed, and the fact that the applicant uses speed dial on its internet browsers. We do not find that the applicant’s intended appeal is a frivolous one. It is arguable.
11. The applicant’s case is that it employs over 126 people whose jobs are at risk, it has entered into several sporting relationship contracts with several sporting clubs, and that the net effect of being locked out of the proceedings and consent will not only ground its business but also affect its clients. On the basis of the material before us, we determine that the intended appeal will be rendered nugatory if the sought stay is not granted.
12. These are the reasons why we allow the application, and stay the proceedings in the High Court Petition No. E307 of 2023 in the Constitutional and Human Rights Division at Milimani until the appeal has been heard and determined. Being an interlocutory appeal, we direct that the same be fixed for hearing on basis of priority.
13. We make no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF MARCH, 2025.**

**S. GATEMBU KAIRU, CIArb, FCIArb**

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**JUDGE OF APPEAL**

**F. A. OCHIENG**

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**JUDGE OF APPEAL**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

