



**Moe & Bill Company Limited v Six Sixty-One-Galu Beach Management Limited  
(Civil Application E013 of 2024) [2025] KECA 1024 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1024 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E013 OF 2024  
SG KAIRU, KI LAIBUTA & GWN MACHARIA, JJA  
JUNE 5, 2025**

**BETWEEN**

**MOE & BILL COMPANY LIMITED ..... APPLICANT**

**AND**

**SIX SIXTY-ONE-GALU BEACH MANAGEMENT LIMITED ..... RESPONDENT**

*(Being an application for stay pending the lodging, hearing and determination of an intended appeal from the Ruling and Orders of the Environment and Land Court of Kenya at Kwale (A.E. Dena, J.) dated 7th November 2023 in ELC Appeal No. E005 of 2023)*

**RULING**

1. In its application dated 21<sup>st</sup> February 2024, the applicant, Moe & Bill Company Limited, applied for an order to stay proceedings in Msambweni Chief Magistrate's Court Civil Case No. E037 of 2021 pending hearing and determination of its appeal against the ruling of the Environment and Land Court (ELC) at Kwale (Dena, J.) delivered on 7<sup>th</sup> November 2023. In that ruling, the ELC struck out the applicant's appeal, being ELC Appeal No. E005 of 2023, in which the applicant had sought to challenge the decision of the Magistrate's Court ordering, among other things, payment of service charge.
2. The background in brief is that the respondent, Six-Sixty One Beach Management Limited, instituted suit against the applicant before the Magistrate's Court at Msambweni, being Civil Case No. E037 of 2021, for recovery of service charge of Kshs. 866,667.30. The applicant filed a defence and counterclaim and an interlocutory application for injunction to restrain the respondent from interfering with its possession of the premises on Title Number Kwale/Galu Kinondo/661.
3. Although the Magistrate's Court had initially granted an interim order of injunction based on that application, in its subsequent ruling delivered on 28<sup>th</sup> April 2023, that court found that the



interlocutory injunction order had lapsed and ordered the applicant to pay service charge of Kshs. 110,131.00 and directed that the suit, being a monetary suit, should quickly proceed to trial.

4. Dissatisfied, the applicant filed the appeal before the ELC, being ELC Appeal No. E005 of 2023. The respondent filed a preliminary objection contending that the ELC did not have jurisdiction to entertain a dispute centred on service charge.
5. In its ruling the subject of the intended appeal, the ELC upheld that preliminary objection and, as already stated, struck out the appeal. Still dissatisfied, the applicant filed a notice of appeal on which the present application is hinged.
6. We heard the application on 3<sup>rd</sup> February 2025. Ms. Kinaga, learned counsel, held brief for Mr. Saluny for the applicant while Ms. Ongeso, learned counsel, held brief for Mr. Karega for the respondent. Counsel relied on their respective written submissions which we have duly considered.
7. In relation to applications of this nature, this Court in the case of *Waithaka vs. Tribunal Appointed to Investigate the Conduct of the Hon. Lady Justice Lucy Njoki Waithaka & Another; Kenya Magistrates & Judges Association (interested party)* (Civil Application No. 8 of 2020)[2020] KECA 571 (KLR) stated as follows:

We note that stay of proceedings is a serious, grave and fundamental judicial action which interferes with the right of any party to conduct litigation. (See: *Francis N. Githiari v Njama Limited* [2006] eKLR). It impinges on the right of access to justice, right to be heard without delay and the right to a fair trial. While addressing the issue of stay of proceedings in the persuasive case of *Global Tours & Travels Limited* (*supra*), Ringera, J as he then was stated thus:

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 justice... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, 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 whether or not the intended appeal 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.”

8. We bear those principles in mind. It is urged for the applicant that the orders sought in this matter are merited; that the applicant has demonstrated that it has an arguable appeal and that unless the orders sought are granted the appeal will be rendered nugatory; that the question whether in this case the Magistrate’s Court at Kwale has jurisdiction to hear the matter which arises from a sublease and involves the right to quiet possession of property is arguable; that disruption of the applicant’s possession of the property by either locking it up or auctioning its assets would result in substantial loss and damage to the applicant; and that if the appeal succeeds, it will have been success in vain.
9. The respondents on the other hand urged that the intended appeal is frivolous; that in their pleadings before the Magistrate’s Court, the applicant averred that it does not dispute its obligation to pay service charge but contested the amount chargeable; and that, consequently, the intended appeal is not arguable.



10. On our part, considering that an arguable appeal is not one that will necessarily succeed (see, Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others [2013] KECA 378(KLR)), we are prepared to grant the applicant the benefit of doubt and hold that the intended appeal is not frivolous.

11. We are however not persuaded that the appeal will be rendered nugatory. The applicant will have an opportunity to defend and tender evidence in support of its case before the trial court and, if aggrieved by the judgment of the Magistrate’s Court, it will not be without recourse. As the learned editors of Halsbury’s Laws of England, 4th edition, volume 37 state at page 330:

“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.”

12. We are not persuaded that exceptional circumstances have been demonstrated in this case to warrant an order to stay proceedings before the Magistrate’s Court.

13. The application fails and is hereby dismissed with costs to the respondent.

**DATE AND DELIVERED AT MOMBASA THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**DR. K.I. LAIBUTA, CArb, FCIArb.**

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**JUDGE OF APPEAL**

**G.W. NGENYE-MACHARIA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

