



**Mulwa v Kenya Orient Insurance Company Limited & another (Civil Appeal E943 of 2024) [2025] KEHC 1179 (KLR) (Civ) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1179 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E943 OF 2024**

**LP KASSAN, J  
FEBRUARY 27, 2025**

**BETWEEN**

**BRIDGET KALEKYE MULWA ..... APPELLANT**

**AND**

**KENYA ORIENT INSURANCE COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KENYA ALLIANCE INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court is the Appellant's Application dated 09.08.2024 brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6, Order 51 Rule 1 & 5 of the Civil Procedure Rules and Article 48 of *the Constitution* of Kenya seeking orders to wit:
  - a. Spent
  - b. Spent
  - c. That there be a stay of proceedings in MCCC E096 of 2024 pending the hearing and determination of this appeal.
  - d. That the appeal herein be heard on priority basis

**Background**

2. The Appellant filed a declaratory suit in the lower court, Milimani CMCC E096 of 2024, seeking enforcement of a judgment awarded in Civil Appeal No. E321 of 2022 for Kshs. 2,762,924/-. The Respondents allegedly defaulted in satisfying the judgment. The Appellant also seeks to strike out the Respondents' Statements of Defence in the lower court suit and obtain judgment for the outstanding sum plus costs and interest.



Issues for determination:

- a. Whether the Proceedings in CMCC E096 of 2024 should be stayed pending hearing and determination of the Appeal?
- b. Who should bear the costs?

### **Applicant's submissions**

3. The Applicant argues that if the proceedings in MCCC E096 of 2024 are not stayed, the appeal will be prejudiced because the Applicant has two judgments. The Applicant submits that the Respondents were well represented and fully participated in both the primary suits, Civil Suit No. 7531 of 2014 and Civil Appeal No. E321 of 2022. That the lower court suit MCCC E096 of 2024 is an execution process, not a retrial. The Applicant referred to Section 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405, stating the "Duty of insurer to satisfy judgments against persons insured". The Applicant submits that they have filed a substantive arguable appeal with probable chances of success. The Applicant contends that a hearing in the declaratory suit is unfair because the matter has already been subject to two trials.
4. The Applicant argues that all evidence required was tendered in the primary suit, making further proceedings unnecessary and potentially an abuse of court process. The Applicant asserts that their appeal has jurisdiction to be heard and determined by the court. The Applicant submits that the Respondents' Statements of Defence are incompetent, frivolous, vexatious, scandalous, and an abuse of court process. The Applicant contends that the appeal raises triable issues and should not be rendered nugatory. The Applicant submits that the Respondents will not be prejudiced if the orders sought are granted. The Applicant requests that the orders sought in their application be granted, protecting the hearing and determination of the appeal.

### **Respondent's submissions**

5. The 2<sup>nd</sup> Respondent submits that the appeal and application are groundless, frivolous, and vexatious, constituting tactics to scuttle the progress of her case. The power to stay proceedings is discretionary and should be exercised sparingly and only in exceptional cases. The court must consider various factors, including the need for expeditious disposal of cases. The 2<sup>nd</sup> Respondent states there is no demonstrated basis upon which the court can exercise its discretion to stay the proceedings. The initial suit the appellant brought was a declaratory one. The lower court dismissed the motion, ruling that the appellant's appeals against this appeal contain triable issues. The lower court found that the 2<sup>nd</sup> Respondent's defense raised triable issues that could not be assailed. The remedies the appellant sought before the lower court are discretionary and could be refused if none of the grounds prescribed under Order 2 rule 15 of the Civil Procedure Rules, 2010 were demonstrated. The appeal is misplaced and proceeds from a fundamental misconception on declaratory suits under Section 10 of the Act as well as principles applicable in applications to strike out. The overriding objective is to facilitate the expeditious resolution of disputes.
6. The application is an afterthought and a gross abuse of the court's process intended to frustrate the progress of the lower court suit, avoid a trial on merits and thereby evade, obstruct and/or delay the course of justice. There is no juridical basis upon which these proceedings can be stayed and the prevailing circumstances appeal to this court to dismiss this application with costs to the respondents. The 2<sup>nd</sup> defendant avers that no statutory notice under Section 10 (2) (a) of the Act was served as required. The 2<sup>nd</sup> defendant's defense raises the following triable issues: Whether a statutory notice was served upon the 2<sup>nd</sup> respondent as prescribed under Section 10 (2) (a) of the Act. Whether in light



of the repudiation of liability by the 2nd defendant, liability could attach against the 2nd respondent under Section 10 (1) of the Act to settle the appellate court's judgment, interest and costs. Whether the policy of insurance limited the use of the vehicle to for social, domestic and pleasure purposes and for the insured's business and profession. Whether the insured was in violation of the terms of the policy. Whether the declaratory suit herein is sustainable against the 2nd defendant.

7. The 2nd Respondent's defense was filed out of time, but appearance was entered in the matter on February 7th, 2024, and the defense filed 14 days later on February 21st, 2024 as required under the Civil Procedure Rules, 2010

### **Analysis and Determination**

8. This application seeks a stay of proceedings in Milimani CMCC E096 of 2024 pending appeal. A stay of proceedings is distinct from a stay of execution and is an extraordinary measure that significantly impacts a litigant's right to access justice and a fair trial. The threshold for granting a stay is stringent.
9. In *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*, Ringera J. observed:

“...whether or not to grant a stay of proceedings... is a matter of judicial discretion to be exercised in the interest of justice. The court should weigh the pros and cons, considering factors such as the need for expeditious case disposal, the prima facie merits of the appeal—not in terms of probable success but whether it raises arguable points—the efficient use of judicial time, and whether the application was made promptly.”

10. Similarly, Halsbury's Laws of England, 4th Edition, Vol. 37, p. 330-332 states:

“A stay of proceedings is a serious and fundamental interruption in a party's right to litigate. Courts should not impose a stay unless it is beyond doubt that the proceedings should not continue.”

11. The court should only exercise this power where proceedings are manifestly frivolous, vexatious, or legally untenable. The Applicant must demonstrate that the appeal presents serious, arguable issues and that proceeding with the lower court case would render the appeal nugatory.
12. In the present case, granting a stay would only serve to delay the pending lower court matter. The Applicant has not sufficiently demonstrated that the appeal raises substantial issues warranting a stay.

### **Conclusion**

13. The application lacks merit and is dismissed with costs. The Applicant is, however, at liberty to prosecute the appeal.
14. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF FEBRUARY 2025.**

**L. KASSAN**

**JUDGE**

In the presence of:-

Katunga for the Applicant

Mutinda for the 2<sup>nd</sup> Respondent



Carol – Court Assistant

