



REPUBLIC OF KENYA



**KENYA LAW**  
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**Development Bank of Kenya Limited & another v Nengi & another (Civil Appeal E1135 of 2024) [2025] KEHC 4756 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4756 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1135 OF 2024**

**TW CHERERE, J**

**MARCH 27, 2025**

**BETWEEN**

**DEVELOPMENT BANK OF KENYA LIMITED ..... 1<sup>ST</sup> APPELLANT**

**DAVID WANDERI WAMUTU T/A TAIFA AUCTIONEERS ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PETER KAMAU NENGI ..... 1<sup>ST</sup> RESPONDENT**

**MARCIA WAMBUI MWURA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. By a ruling dated 30<sup>th</sup> August 2024 in Milimani MCCC No. E034 of 2024, the court restrained the 1<sup>st</sup> Appellant from exercising its statutory power of sale until the suit is heard and determined.
2. Aggrieved by the said ruling, the Appellants filed this appeal and simultaneously the notice of motion dated 20<sup>th</sup> February 2025 premised on Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Order 42 Rule 6(1), Order 43(1)(u), and Order 51 Rule 1 of the *Civil Procedure Rules*. The Appellants seek an order of stay of proceedings in Milimani MCCC No. E034 of 2024, pending the hearing and determination of this appeal.
3. The application is supported by an affidavit sworn on 20<sup>th</sup> February 2025 by Chris Gachiri, the 1<sup>st</sup> Appellant's Principal Legal Officer, and is based on the following grounds:
  1. The Appellants are aggrieved by the ruling delivered on 30th August 2024 in Milimani MCCC No. E034 of 2024.
  2. The Appellants have filed an appeal which has high chances of success.



3. Milimani MCCC No. E034 of 2024 is scheduled for hearing on 15<sup>th</sup> September 2025.
4. The Respondents, though duly served, neither filed any response nor attended the hearing of the application.

### **Analysis and determination**

5. Having considered the application in light of the supporting affidavit and annexures thereto, the only issue for determination is whether the Applicants have met the legal threshold for granting an order for stay of proceedings.
6. In *David Morton Silverstein v Atsango Chesoni* [2002] KECA 287 (KLR), the Court of Appeal held that the power to grant a stay of proceedings lies within the Court's discretion that must be exercised based on the specific facts of each case, ensuring that each situation is considered on its own merits.
7. In *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*, Ringera, J (as he then was) expounded that the decision to grant a stay of proceedings is within the Court's discretion, which should be exercised based on the interest of justice to be exercised by balancing the potential benefits for the party seeking the stay with the potential harm to the opposing party, as well as the broader impact on the legal system's efficiency.
8. In *Kenya Wildlife Service v James Mutembei* [2019] eKLR, the Court emphasized that granting a stay of proceedings is a serious action that interferes with the right of access to justice and should only be granted if the applicant presents a strong case justifying the delay, ensuring that the decision is based on valid reasons and not merely for postponing the proceedings.
9. A similar principle was reaffirmed in *MRM aka RLM v SMRM* (Civil Appeal 124 of 2022) [2024] KEHC 446 (KLR) (25 January 2024) (Ruling), where the Court stated that a stay of proceedings is a significant matter that should only be considered in the most deserving cases, as it affects the right to a speedy trial.
10. In *Richard Nchapi Leiyagu v IEBC & 2 others* [2013] eKLR, the Court of Appeal reinforced the importance of the right to a hearing, stating the right to a hearing has always been a well-protected right in our Constitution and is also the cornerstone of the rule of law.
11. The constitutional imperative under Article 50 of the *Constitution* of Kenya, 2010 guarantees the right to a fair hearing without delay and a party seeking a stay of proceedings must demonstrate that the appeal will be rendered nugatory or that they will suffer substantial prejudice, beyond the routine inconvenience of litigation, should the matter proceed.
12. In the present matter, the Applicants have failed to demonstrate how proceeding with the suit would cause them irreparable harm or prejudice beyond ordinary litigation inconvenience. It is my considered view that should the appeal ultimately succeed, any resulting relief can be effectively addressed through appropriate legal remedies, without the need to suspend the ongoing trial which is scheduled for hearing six months from now.
13. In light of the above, this Court concludes that the Applicants have not met the required threshold to justify the granting of an order for stay of proceedings.
14. Accordingly, the Notice of Motion dated 20<sup>th</sup> February 2025 is dismissed with Applicants bearing their costs.
15. This matter shall be mentioned before the Deputy Registrar on 20<sup>th</sup> May 2025 to confirm filing of the Record of Appeal.



**DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF MARCH 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Mr. Wandere

For Applicants - Ms. Wafula for Kiunga Kingirwa & Co. Advocates

For Respondents - N/A for Daniel & Kenneth Advocates LLP

