



**Hatari Security Guards Limited v Marema (Civil Appeal
E037 of 2024) [2025] KEHC 5172 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5172 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CIVIL APPEAL E037 OF 2024
AK NDUNG’U, J
APRIL 28, 2025**

BETWEEN

HATARI SECURITY GUARDS LIMITED APPLICANT

AND

JAPHETH NYAKUNDI MAREMA RESPONDENT

RULING

1. Hatari Security Guards Limited (The Applicant) moved this court by way of a Notice of Motion dated 18th day of November 2024, seeking the following orders;
 1. Spent.
 2. Spent.
 3. That this Honourable court be pleased to order a stay of further proceedings in Nanyuki MCCC No. E141 of 2023 between Japheth Nyakundi Marema and Hatari Security Guards Limited pending the hearing and determination of the appeal.
 4. That such other additional, suitable and or alternative orders be made as are just and expedient all circumstances of the case and this application considered.
 5. That the costs of this application be provided for.
2. The application is based on grounds namely;
 1. That applicant is dissatisfied with the Ruling delivered against it on 6th November, 2024 and has lodged an Appeal challenging the said Ruling and the orders emanating therefrom.
 2. The Appeal has high chances of success and strong argument in the Applicant’s favour.
 3. This application has been brought expeditiously and without unreasonable delay.



4. That if a stay of proceedings in Nanyuki MCCC No. E141 of 2023 is not granted the applicant's pending appeal shall be rendered nugatory and an academic exercise.
5. The Applicant is willing to abide by such reasonable stay terms as the court may order pending the hearing and determination of the Appeal.

The application further was supported by the affidavit of Stephen Mwangi Kimani which generally reiterates the grounds in support of the application.

3. The application is opposed through a Replying Affidavit by Patricia G. Mugambi. She depones that the Motion lacks merit, is made mala fides with the sole intention of delaying the expeditious disposal and/or setting of the claim herein and is a desperate attempt once again on the part of the Applicant to shop for a forum.
4. Further, it is deponed that the trial court had the requisite jurisdiction to hear and entertain the matter to its conclusion. That the Preliminary Objection dated 24/07/2024 raised by the Applicant was premised on the assertion that the Magistrates court lacks jurisdiction to hear and determine matters relating to Work Injury claims yet the Respondents case is premised on the Traffic Act, The Highway Code and the doctrine of Res Ipsa Loquitor.
5. That the Applicant's reliance on Section 16 of the Work Injury Benefits Act (WBA) is misplaced as the said provision was declared unconstitutional in the case of Law Society of Kenya V Attorney General & Another (2019) eKLR, rendering it inapplicable. That Trial Court's jurisdiction to hear and determine matters relating to work injury claims is well-founded in law, as clarified by subsequent jurisprudence following the declaration of Section 16 of WBA as unconstitutional.
6. The application was canvassed by way of written submissions filed.
7. I have had occasion to consider the application, the grounds and affidavit in support as well as the response. I have had due regard to the written submissions filed.
8. The question for determination whether the Applicant merits an order of stay of proceedings in Nanyuki MCCC No. 141 of 2023 pending the hearing of its appeal.
9. The grant of a stay of proceedings is a special jurisdiction which is exercised by courts cautiously and only in deserving cases. In the case of Kenya Wildlife Service Vs James Mutembei (2019) eKLR, Gikonyo J correctly captured the nature and scope of this jurisdiction where he sated;

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”.

10. Further, in the persuasive authority in Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated that: -

“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 not whether it 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”.

11. In the instant application, the Applicant challenged the jurisdiction of the trial court to determine Nanyuki MCCC NO. E1410F 2023. That challenge that had been mounted through a preliminary objection was dismissed giving rise to the present appeal. The Applicant seeks that the proceedings in the trial court be stayed pending the determination of this appeal.
12. Whether or not to grant a stay of proceedings would in light of the high threshold established by the case law aforesaid must in my view depend on the facts of each case. The court must be satisfied that there exists good cause to obstruct the flow of justice by halting a legal process seeking enforcement of rights,
13. I am persuaded that where there exists a serious challenge to the jurisdiction of the court before which a matter is proceeding and where that challenge has high probability of success, a stay of proceedings is a suitable remedy. This would serve the parties justice by avoiding unnecessary expenses, save parties’ time and mitigate waste of judicial time which would, in the contrary, be the case should the trial proceed to finality only for this court to find that the trial court had no jurisdiction.
14. With the result that the application succeeds and is allowed. I make the following orders;
 - a. An order of stay of further proceedings be and is hereby issued in Nanyuki MCCC E141 of 2023 pending the hearing and determination of the Appeal.
 - b. The record of Appeal be filed and served within 30 days.
 - c. Costs to abide the outcome of the appeal.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF APRIL, 2025.

A.K. NDUNG’U

JUDGE

