



**Abdullahi v Medina Bus Services Limited & another (Civil Appeal E320 of 2024) [2025] KEHC 9174 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9174 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E320 OF 2024  
EN MAINA, J  
JUNE 26, 2025**

**BETWEEN**

**SHAFI GARAD ABDULLAHI ..... APPELLANT**

**AND**

**MEDINA BUS SERVICES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ABDIRASHID MOHAMUD ABDI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court are two applications dated 25<sup>th</sup> April 2025 and 5<sup>th</sup> May 2025 by which the Appellant/Applicant seeks a stay of execution.
2. The applications are expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 45, Order 42 Rule 6 of the Civil Procedure Rules. The gravamen of the applications is that the Respondents obtained judgment against the Applicant in the court below and being aggrieved by the judgment and decree the Applicant has appealed and stands to suffer substantial loss should stay of execution not be granted and the appeal is successful. It is contended that the case from which the judgment arises was a test suit in a series of cases and hence it is necessary that the other cases be stayed pending the hearing and determination of this appeal as this court would be embarrassed were those cases go to execution and this appeal succeeds.
3. The application is vehemently opposed. It is argued that the applicant is guilty of laches for bringing the application five months after the judgment was delivered; that the delay has not been explained; that the application is vexatious and a waste of judicial time and is only intended to obstruct or delay the cause of justice and to keep the Respondent from enjoying the fruits of his judgment. Further that the Appellant has not demonstrated substantial loss as an impeding execution does not in itself amount to substantial loss.



4. Unlike an order for stay of execution, stay of proceedings is a purely discretionary relief granted by the court under its inherent jurisdiction under Sections 1A and 3A of the Civil Procedure Act as the same is not expressly provided for under the Rules.
5. The court's discretion must be exercised judicially but not capriciously or whimsically. The imperative for the expeditious disposal of cases as provided in the Sections 1A and 1B of the Civil Procedure Act and Article 159(2) (b) and (d) of the Constitution must always be borne in mind when determining whether or not to stay proceedings in a subordinate court.
6. The Appellant/Applicant has urged this court to stay proceedings in twelve cases which are in the same series as the one being appealed against. The question I must ask is whether such stay will aid the objective of the Civil Procedure Act and the principles of Article 159(2) (b) and (d) of the Constitution or whether the stay shall be contra that objective and principles. My finding is that a stay of those cases shall not aid the fair, just and expeditious disposal of the cases. The hearing of the cases listed in Order 4 (a) to (c) of the Notice of Motion shall therefore be left to continue.
7. However, as the Appellant has demonstrated his bonafides by depositing the decretal sum in respect to Kithimani MCCC No.152 of 2019, as security and because substantial loss has been demonstrated and the application having been filed timeously, execution of the decree in that case shall be stayed pending hearing and determination of this appeal. The Appellant is however cautioned that he shall be required to prosecute the appeal within six months of the date of this order failing which the stay granted shall lapse.
8. The Applicant shall bear the costs of the appeals.

Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Ms Kagoli for the Appellant

Mr. Kyalo for Fred Mwia for the 1<sup>st</sup> Respondent

Geoffrey - Court Assistant

