



LMN v DNO; NTN (Intended Interested Party) (Matrimonial Cause E028 of 2024) [2025] KEHC 12327 (KLR) (Family) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 12327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E028 OF 2024
CJ KENDAGOR, J
JULY 31, 2025**

BETWEEN

LMN APPLICANT

AND

DNO RESPONDENT

AND

NTN INTENDED INTERESTED PARTY

RULING

1. This cause for division of matrimonial property was commenced by way of an Originating Summons filed by LMN against DNO. The marriage between the two was dissolved on 24th May, 2024. Their son, NTN, applied to be enjoined as an interested party in the division of matrimonial property cause, and this Court, in a ruling delivered on 17th March, 2025, dismissed his application dated 15th November, 2024. The main cause is still pending hearing and determination.
2. The application now before Court is dated 15th April, 2025. The Applicant (N) seeks the following orders;
 - i. Spent
 - ii. Spent
 - iii. That there be a stay of further proceedings, pending the hearing and determination of the intended interested party’s Appeal against the Ruling and Order given on 17th March 2025;



- iv. That in the alternative to prayer iii above, there be a stay of further proceedings herein limited to Title no. Nyamira/Matutu Settlement Scheme/XXX pending the hearing and determination of the intended appeal against the Ruling and Order given on 17th March 2025;
 - v. That costs be provided for.
3. The application is opposed by the Respondent (D). Parties also filed submissions and authorities relied on, which I have duly considered.

Applicant's case

4. The Applicant has stated that he is dissatisfied and intends to appeal against the decision that declined to have him enjoined in the proceedings herein.
5. He asserts that unless the stay of proceedings pending appeal is granted, his appeal will be rendered nugatory.
6. The Applicant further contends that he will face significant loss if the stay order is not granted, as he asserts that he has a beneficial interest in the property Nyamira/Matutu Settlement Scheme/XXX.

Respondent's case

7. The Respondent argues that, since the intended appeal has not been filed, the current application undermines access to justice and the stay of proceedings order should not be issued.
8. He further argues that the stay of proceedings would cause unnecessary delays and that the threshold for granting the orders sought has not been met.

Analysis and determination

9. The issue for determination is whether the Court should grant an order of stay of proceedings pending the intended appeal by the Applicant.
10. Order 42 Rule 6 of the Civil Procedure Rules grants concurrent jurisdiction to this Court and the Court of Appeal in considering applications for stay of proceedings pending appeal.
11. As stated in the authority relied on by both parties herein – *Butt vs Rent Restrictions Tribunal* [1979] eKLR, the Court has the discretion to grant or refuse a stay of proceedings based on the specific facts and circumstances of each case, and like all other discretions, it must be exercised judiciously and in the interest of justice.
12. In the case of *Global Tours & Travels Limited*; Nairobi HC Winding up Cause No. 43 of 2000 Ringera J, (as he then was) stated as follows: -

“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”.

13. The current application was filed close to a month after the ruling was delivered, despite directions having been issued for the hearing of the main cause on the date when the ruling was made. The hearing on 7th May, 2025 did not proceed to accommodate the hearing and determination of the application for stay of proceedings.
14. This Court held that his joinder is unnecessary and that his inclusion would obscure the main issues that need addressing in this matrimonial property case, particularly concerning the rights and interests of the parties involved, who are the Applicant’s parents, over the subject property presented as matrimonial property.
15. ^{The} Applicant has stated that the appeal will be rendered nugatory if a stay of proceedings is not granted, but has not demonstrated that there is an appeal pending. The Applicant asserts that he filed a Notice of Appeal dated 21st March, 2025, and he also acknowledges that the appeal itself has not been filed.
16. As of 25th June, 2025, when this matter was reserved for a ruling on the application now before the Court, there was no indication from the Applicant that he had lodged the appeal. The Court must carefully consider these circumstances, particularly in light of the respondent’s claim that the Applicant is deliberately seeking to obstruct the timely hearing and determination of this matter.
17. Further, although the applicant argues that the intended appeal raises arguable issues and has high chances of success, he has not attached a draft memorandum of appeal that outlines the grounds of appeal for consideration.
18. Given that this case involves the division of matrimonial property, asserting that the Applicant has an intended appeal and seeking a stay of proceedings before the appeal has been filed could potentially result in a miscarriage of justice for parties who would instead be focusing on the swift hearing and determination of the matter.
19. The Applicant has not shown exceptional circumstances to persuade the Court to grant a stay of proceedings.
20. After considering the application and the arguments presented by the parties, I conclude that the Applicant has not met the threshold necessary for the grant of a stay of proceedings in this case.
21. The application dated 15th April 2025 is dismissed.
22. I make no order as to costs.
23. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 31ST DAY OF JULY, 2025.

.....

C. KENDAGOR JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Nyamweya Advocate holding brief for Mituga Advocate for Interested Party/Applicant

Mr. Charo, Advocate for Respondent Mr. Nyagaka Advocate for Applicant

