



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chege v Mwangi (Civil Appeal (Application) E078 of 2024)  
[2025] KECA 2229 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2229 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) E078 OF 2024  
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA  
DECEMBER 19, 2025**

**BETWEEN**

**JOHN MAINA CHEGE ..... APPELLANT**

**AND**

**BETH WAITHIRA MWANGI ..... RESPONDENT**

*(Being an Application for stay of proceedings in respect of the Ruling of the High Court in Murang'a (Wakiaga, J.) delivered on 22nd November 2023 in Civil Case No. E009 of 2021)*

**RULING**

1. Before the Court is an application by way of a notice of motion dated 27<sup>th</sup> May 2024 ostensibly brought under sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 of the Civil Procedure Rules. The *Civil Procedure Act* and the rules thereof are not applicable in this Court. The Court of Appeal has its own Rules: The Court of Appeal Rules, 2022. Nonetheless, without applying technicalities at the expense of justice, we proceed to consider the application and, at the same time, bring to counsel's attention the need to use the procedures applicable to the different cadres of our courts. Rules are put in place to assist and facilitate the administration of justice. Having so stated, the applicant seeks a stay of proceedings in the Murang'a High Court Case Number E009 of 2021, pending hearing and determination of the application and appeal.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the applicant, John Maina Chege, where he states that the appeal was filed on 29<sup>th</sup> April 2024; on 30<sup>th</sup> April 2024, the High Court granted a conditional stay of 21 days to allow the filing of this application; he is aggrieved by the order that the suit is to proceed to trial despite an earlier ruling in Murang'a ELC No. 379 of 2017, which dismissed the suit between the same parties; the ELC decision was final; in his application before the High Court had pleaded res-judicata, but the High Court disregarded it; the High Court ought not to have overruled, varied, re-opened or modified the final judgment of the ELC Court, as both courts have equal/parallel jurisdiction; should there be further proceedings the



applicant would be prejudiced; the order for a stay is fair, necessary, and justified, and that granting it would not cause undue prejudice to the respondent.

3. Learned counsel for the applicant filed submissions dated 6<sup>th</sup> May 2025 reiterating the contents of the application and the supporting affidavit. Counsel argued that the prayer for a stay of proceedings is meant to prevent a situation where the High Court at Murang'a and ELC would have conflicting orders. He urged that the matter before the court is res judicata, having been dealt with in Murang'a ELC Case No. 379 of 2017, a court of competent jurisdiction, and as such the case ought to have been dismissed.
4. By the time of the hearing of the application, the respondent had not filed submissions.
5. To succeed in an application under Rule 5(2)(b) of the Court of Appeal Rules, an applicant has to satisfy twin principles that are enumerated in many decisions of this court, namely:
  - i. An applicant must demonstrate that they have an arguable appeal, and secondly;
  - ii. That the intended appeal (or appeal if already filed) will be rendered nugatory if the execution of the decree, order or proceedings is not stayed.
6. In *David Morton Silversein vs. Atsango Chesoni* [2002] eKLR, this Court stated that for an order of stay to issue, the applicant must first demonstrate that the appeal or intended appeal is arguable, that is, it is not frivolous and that the appeal or intended appeal would, in the absence of a stay, be rendered nugatory.
7. The applicant did not attach to his application a draft memorandum of appeal to allow the court to have a glimpse of his complaint for purposes of determining whether he has an arguable appeal. From the application and the affidavit, we deduce that the trial judge's ruling aggrieves him, as the points raised in his preliminary objection must be considered against the verdict in the case named to determine whether the matter is res judicata. With the facts before us and without preempting the decision of the bench that will eventually hear the appeal, we do not find the point raised to be arguable, as the position in law on what ought to be raised as a preliminary point of law is settled.
8. On the second limb, which we do not necessarily have to consider, the appeal will not be rendered nugatory by the mere fact that the trial court may have to hear the appeal before the appeal to this Court is heard and determined.
9. The applicant having failed to satisfy the twin principles we proceed to dismiss the application with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL ALI-ARONI**

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**JUDGE OF APPEAL**



I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

