



**Henkel Polymer Company Limited t/a Henkel Chemical EA v Narkhi Enterprises Limited
(Civil Appeal E512 of 2024) [2024] KEHC 13339 (KLR) (Civ) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13339 (KLR)

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

CIVIL

CIVIL APPEAL E512 OF 2024

AN ONGERI, J

OCTOBER 31, 2024

BETWEEN

**HENKEL POLYMER COMPANY LIMITED T/A HENKEL CHEMICAL
EA APPLICANT**

AND

NARKHI ENTERPRISES LIMITED RESPONDENT

RULING

1. The application coming for consideration in this ruling is the one dated 17/4/2024 seeking stay of execution of the ruling and orders delivered on 28/3/2024 pending the hearing and determination of this appeal.
2. The trial court entered judgment on admission in favour of the respondent against the applicant on 28/3/2024 vide application dated 20/5/2022.
3. The application is supported by the affidavit of Ruth Martha Henkel sworn on 16/4/2024 as follows;

Vide a ruling dated 28/03/2024, the Subordinate court allowed the application for judgement on admission and entered judgement in favour of the Respondent in the sum of Kshs. 10,944,757.20 together with interests and costs for the suit and the application. The Appellant filed on appeal against the judgement.
4. The Respondent is likely to execute against the applicant unless the orders sought are granted and any such enforcement will render the appeal nugatory resulting in the Applicant's irreparable loss.
5. The respondent filed a replying affidavit stating as follows;



6. The Respondent filed a suit against the Defendant seeking judgement of Kshs. 10, 944, 757.20 together with interests and costs predicated on goods supplied and not paid for, despite undertakings of settlement. Judgement on admission was entered on 22/4/2024.
7. He deposed that the application has not met the conditions set by Order 42 Rule 6 as the applicant has failed to demonstrate irreparable loss if the stay is not granted and has not deposited security for the due performance of the decree. Further, the application is based on mere assumption that the Respondent is going to instruct auctioneers.
8. He urged the Court to order the Appellant to deposit half of the decretal sum with the Respondent and the other half into an interest earning account in the name of the Advocates for both parties, if it allows the application.
9. He further deposed that the Applicant had not demonstrated that it has an arguable appeal to enable stay pending its determination.
10. The Respondent is likely to suffer substantial loss if stay orders are granted yet it has capacity to settle the judgement if the appeal succeeds.
11. The parties filed written submissions as follows;
12. Counsel for the Applicant submitted that the appeal is likely to be successful as the summary judgement against it is irregular on the basis that he admission was not unequivocal and the defense raised triable issues.
13. He submitted that the application was filed less than a month after the impugned decision thus there was no undue delay.
14. He contended that the decretal sum is a substantial amount that could paralyze the applicant's business after being hit by the pandemic. Execution would render the appeal nugatory.
15. The Respondent submitted that as per Order 42 Rule 6, no order for stay ought to be granted if the applicant has not deposited security for the due performance of the decree. He thus urged that should the court allow the Application; the Appellant be ordered to deposit half the decretal sum with the Respondent and the other half into an account under the joint names of the Advocates for both parties within 7 days of the order, failure to which, the Respondent be at liberty to execute.
16. The parties filed written submissions which I have duly considered.
17. The sole issue for determination is whether the applicant is entitled to stay of execution of the judgement in CMCC No.E1631 of 2021 pending appeal.
18. The law governing stay of execution pending appeal is Order 42 of the Civil Procedure Rules.
19. The principles guiding the grant of a stay of execution pending appeal are now well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which provides as follows;

“No order for stay of execution shall be made under subrule (1) unless—

- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and



(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant”.

20. In the case of RWW v EKW [2019] eKLR, the court considered the purpose of a stay of execution order pending appeal and stated as follows;

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

21. I allow the application dated 17/4/2024 on the following conditions;

- i. That the plaintiff deposits half the decretal sum in court within 30 days of this date.
- ii. That the applicant pays the respondent the costs of this application assessed at Ksh.25,000 within 30 days of this date.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31ST DAY OF OCTOBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent

