



**Nyaga v Attorney General (Civil Appeal E019 of 2023)  
[2024] KEHC 16162 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16162 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E019 OF 2023  
LM NJUGUNA, J  
DECEMBER 19, 2024**

**BETWEEN**

**JAMES MURUANGENDO NYAGA ..... APPLICANT**

**AND**

**THE HON ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

1. The applicant has filed a notice of motion dated 24<sup>th</sup> June 2024 through which the following orders are sought:
  - a. Spent;
  - b. That leave be granted to the applicant to come on record;
  - c. Spent;
  - d. That this honourable court be and is hereby pleased to stay execution of the judgment entered on 13<sup>th</sup> December 2023 in favour of the appellant and against the respondent;
  - e. That this honourable court be pleased to stay execution of the judgment entered herein on 13<sup>th</sup> December 2023 as the respondent has filed an appeal which has a high probability of success on a balance of probability and the applicant will suffer prejudice and loss of public funds if this application is not heard; and
  - f. The costs of this application be provided for.
2. The applicant has filed an appeal at the Court of Appeal in Nyeri, through a notice of appeal dated 11<sup>th</sup> January 2024, challenging the judgment of this court entered on 13<sup>th</sup> December 2023. According to the applicant, the appeal has high chances of success and that if execution is not stayed and the respondent moves to execute, the applicant will suffer prejudice and public funds will be expended.



3. The respondent filed grounds of opposition stating that prayer 2 of the application is moot since the AG has been on record at all times since filing of the appeal herein. That the applicant has not shown that the respondent is in the process of executing the judgment. That the applicant has also not demonstrated that an appeal has been filed before the Court of Appeal.
4. The application was canvassed by way of written submissions.
5. The applicant relied on the provisions of Order 42 Rule 6 of the Civil Procedure Rules and the case of RWW v. EKW (2019) eKLR. The applicant stated that it learned of the judgment through a letter from the respondent, demanding payment of the decretal amount of Kshs.9,471,068/=. He also relied on Rules 77 and 84(1) of the Court of Appeal Rules 2022 and argued that the notice of appeal filed at the Court of Appeal is enough proof of an appeal.
6. Further reliance was placed on the cases of Antoine Ndiaye v African Virtual University [2015] eKLR and James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR and he urged that the conditions for granting of stay orders have been met. That the order may be granted through the discretion of the court and he cited the cases of Absalom Dova v. Tarbo Transporters (2013) eKLR and Tarbo Transporters v. Absalom Dova (2012) eKLR.
7. The respondent submitted that the application has been filed based on wrong provisions of the law that are not applicable in the circumstances. That the exhibits alluded to in the supporting affidavit to the application have not been produced for the court's reference. That the notice of appeal was not served within good time and that there is a delay in filing the application herein. He relied on the cases of Kemboi (Suing as the Legal Representative of the Late Jonathan Kipkemboi Chepkong'a) v Kimaiyo [2024] KEELC 6293 (KLR), Benjamin Kimeli Tanui v Omari Salim Nasib & Jamka Said alias Jamila Said [2020] KEELC 1874 (KLR), Joseph Odide Walome v David Mbadi Akello (Miscellaneous Civil Application E041 of 2021) [2022] KEHC 2748 (KLR), James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR and Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR. These cases laid basis for his argument that the prerequisites for granting stay of execution have not been met.
8. The issue for determination is whether or no the application has merit.
9. Stay of execution orders may be sought when the court is satisfied of the parameters set out in Order 42 Rule 6(2) of the Civil Procedure Rules 2010 as follows:
  - (2) 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.
10. The applicant has deposed that he has lodged an appeal before the Court of Appeal and the same is awaiting directions. He produced a copy of the Notice of Appeal dated 11<sup>th</sup> January 2024. It was his argument that if stay of execution is not granted, the respondent will execute for the decretal amount, which would have to be expended from public funds. On the other hand, the respondent opposed the application and stated that he was not served with the notice of appeal and that the application was brought too late. The impugned ruling was delivered on 13<sup>th</sup> December 2023 and the application was filed in June 2024, meaning there is a 6-month delay. The applicant stated that he learned of the impugned order when the respondent wrote a demand letter for the decretal amount. At that time,



the applicant filed an appeal but did not seek stay of execution. There is no sufficient explanation for the delay in filing this application.

11. The applicant stated that substantial loss and prejudice will result if the order of stay is not granted in the face of a pending appeal. It is my view that even though execution is a lawful process, there is a pending appeal before the Court of Appeal and if the order is not granted, the appeal will be rendered an academic exercise. As regards the requirement for security, if such an order is made, the applicant will be forced to draw such monies from public funds.
12. In my view, since the orders sought can be granted on discretion of the court, I am persuaded by the overriding objective under section 1A, 1B and 3A of the *Civil Procedure Act*. I am also persuaded to grant the orders under Article 159 of the *Constitution* in exercise of the wide discretion of the Court.
13. Therefore, prayers (2), (4) and (5) of the application are allowed as prayed. There shall be no order as to costs.
14. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the Appellant/Respondent

..... for the Respondent/Applicant

