



REPUBLIC OF KENYA



**KENYA LAW**  
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**Awino v Kioko (Civil Appeal 161 of 2017)  
[2023] KEHC 1490 (KLR) (Civ) (24 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1490 (KLR)

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

**CIVIL**

**CIVIL APPEAL 161 OF 2017**

**AA VISRAM, J**

**FEBRUARY 24, 2023**

**BETWEEN**

**JOSEPH AWINO ..... APPLICANT**

**AND**

**REUBEN KIOKO ..... RESPONDENT**

*(In the matter of an application of stay of execution pending the hearing and determination of appeal against the Judgment of the Disciplinary Committee delivered on the 13/03/2017 in respect of Advocates Disciplinary Committee Cause No. 178 of 2015)*

**RULING**

1. The appellant's application is dated December 21, 2021 and seeks a stay of a Judgment delivered on March 13, 2017, in which the Advocates Disciplinary Tribunal ("ADT") ordered him to pay the Respondent the sum of Kshs. 30,000 with interest, on account of his failure to serve the Respondent.
2. It is imperative for both parties to understand in what instances a court of law will grant a stay of orders/decree. The principles are well laid and must be followed otherwise it would be akin to denying the successful litigant the fruits of judgment.

Order 42 rule 6 is succinct:

- (2) No order for stay of execution shall be made under sub rule (1) unless –
  - a. the court is satisfied that substantial loss shall 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 order for the due performance of such decree or order as may ultimately be binding upon him has been given by the applicant.”
3. The applicant’s affidavit is sworn by the appellant but no where has shown the loss that he will suffer if the stay is not granted. In the main body of the Notice of Motion the applicant simply states that unless the stay is granted the respondent will not be able to refund the amount paid to him.
4. The applicant’s affidavit in support of the motion attacks the decision of the ADT but does not make a case for a stay of execution of that decision. The applicant’s belief that the decision of a Tribunal was “unfair”, and further, his explanation that he is being penalized for the actions of his clerk, are not sufficient grounds to warrant a stay of execution.
5. In short, the applicant has not shown the substantial loss that he will suffer if the application is not granted.
6. This is not acceptable. As my Learned Brother Ringera, J. (as he then was) said on the same issue said:
 

“Substantial loss said to be likely to result from a refusal of a stay must be demonstrated as a matter of fact; and not by a mere flat statement in an affidavit or at the Bar”
7. Once again, there is simply no evidence that the applicant would suffer substantial loss if he made the payment (of Kshs. 30,000) to the respondent, or that the respondent lacks the means necessary to pay him back in the event his appeal is successful.
8. To show that there is indeed an arguable appeal or imminent loss is a vital prerequisite in such an application and the applicant has not done so. See generally, *T. Inamdar & 2 others v Postal Corporation of Kenya* Nairobi H.C.C.C No 1629 of 2000 and *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* (1982 -88) KAR 1018.
9. The application was also filed with great delay, almost five years after the Judgment from which a stay is sought. Finally, no security was offered by the applicant in support of his application.
10. The court is simply not satisfied that the requirements for grant of a stay have been met.
11. I therefore dismiss this application.
12. I make no order as to costs because the respondent did not take part in the proceedings.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF FEBRUARY 2023**

**ALEEM VISRAM**

**JUDGE**

**In the presence of;**

..... for the Applicant

..... for the Respondent

