



Kenya Anti-Corruption Commission v Nabutola & 3 others (Anti-Corruption and Economic Crimes Civil Suit 30 of 2016) [2023] KEHC 1066 (KLR) (Anti-Corruption and Economic Crimes) (21 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1066 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT 30 OF 2016
EN MAINA, J
FEBRUARY 21, 2023**

BETWEEN

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

REBECCA NABUTOLA 1ST DEFENDANT

ONG'ONG'A ACHIENG 2ND DEFENDANT

DUNCAN MURIUKI 3RD DEFENDANT

MANIAGO SAFARIS LTD 4TH DEFENDANT

(FORMERLY CIVIL SUIT NO 423 OF 2009)

RULING

1. This is a ruling on the 1st defendant's application for stay of execution of the judgment of this court pending appeal.
2. The application is contained in the notice of motion dated December 9, 2022 which is expressed to be brought under Order 42 Rule 6(1) & (2), Order 51 Rule 1 of the *Civil Procedure Rules* and sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*.
3. The gist of the application is that the 1st defendant being dissatisfied with the judgment delivered by this court on November 10, 2022 is intent on exercising her right of appeal and has lodged a notice of appeal; that the stay for 30 days granted by this court, when the judgment was delivered, has expired and in the absence of an order for stay the plaintiff is likely to execute the judgment and thereby render



the appeal nurgatory. Further that the application was brought without undue delay and that the 1st defendant is willing to abide by any reasonable condition that this court may impose.

4. The application is opposed by the plaintiff who submits that the 1st defendant has not met the threshold for grant of the order.
5. I have taken note of the notice of appeal filed herein on November 22, 2022. I have also considered the application, the response thereto, the rival submissions of learned counsel for the parties, the cases cited thereat and the law.
6. I am persuaded that the 1st defendant/applicant has met all the conditions for stay of execution pending appeal provided in Order 42 Rule 6(1) & (2) of the Civil Procedure Rules, which are that the application must be brought without undue delay; that the appeal is likely to be rendered nurgatory and that the applicant is willing to deposit security as would be imposed by the court. The judgment herein was delivered on November 10, 2022 and this application was filed on December 11, 2022 hence within the pendency of the 30 days stay of execution granted orally by this court. The delay is therefore not inordinate. The applicant has also expressed her willingness to deposit security for costs. Accordingly, the application for stay is granted provided that the entire decretal sum is deposited in court within 14 days of today's date. For the avoidance of doubt should the decretal sum not be deposited as directed, the order for stay shall lapse.
7. As regard the issue of costs the order that best commends itself to me is that the 1st defendant/applicant shall bear the costs of the application.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF FEBRUARY 2023.

E N MAINA
JUDGE

