



REPUBLIC OF KENYA



**Eldoret Express Limited v Njoroge (Civil Appeal E182 of 2022)
[2023] KEHC 2732 (KLR) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E182 OF 2022
RN NYAKUNDI, J
MARCH 30, 2023**

BETWEEN

ELDORET EXPRESS LIMITED APPELLANT

AND

PRISCA WAITHERA NJOROGE RESPONDENT

RULING

Coram: Before Hon. R. Nyakundi

M/S Kimondo Gachoka & Company Advocates for the Appellant

Kimaru Kiplagat & Company for the Respondent

1. The applicant approached this court vide a Notice of Motion application dated 16th December 2022 seeking the following orders;
 1. Spent
 2. Spent
 3. That there be a stay of execution of the judgment and decree of the subordinate court in the subordinate court Eldoret Small Claims Court Case No. E162 of 2022 -2022 (*Priscilla Waitthera Njoroge v Eldoret Express Limited*) pending the hearing and determination the Appeal herein.
 4. That this Honourable Court allow the Applicants to furnish the Court with security in the form of a Bank Guarantee from Family Bank or any other Bank of good repute for the whole sum of Ksh 414,100/-.
 5. That costs of this application be provided for.



2. The application is premised on the grounds set out therein and the contents of the affidavit of Joseph Ng'anga Muigai in support of the same.
3. The applicant's case is that it has appealed against the judgement and decree of Hon. T.W Mbugua (RM) in No. E162 of 2022 - 2022 (*Priscilla Waitibera Njoroge v Eldoret Express Limited*) delivered on 18th November, 2022 awarding awarded the respondent herein Ksh 414, 100/- plus costs and interests. It is apprehensive that the respondents are likely to execute against the appellant who stands to suffer substantial loss. Further, that the appeal is likely to be rendered nugatory unless the orders of stay sought herein are granted. The appellant offered security in the form of a guarantee and deposed that to facilitate the issuance of the said Bank Guarantee as security, the Appellant's insurer, M/s Directline Assurance Company, have a long-standing agreement with Family Bank Limited, a copy of which is annexed to the Supporting Affidavit hereto, in which the said Bank has agreed to provide such security pending the hearing and determination of this Appeal. It urged that the application has been brought without undue delay and further, that it would be in the interest of justice to grant the orders for stay of execution.
4. Upon considering the application, affidavits and annexures thereto, the following issues arise for determination;

Whether orders for stay of execution should issue

5. Stay of execution pending appeal is governed by Order 42 rule 6(2) of *Civil Procedure Rules* which provides as follows:-
 - “(2) No order for stay of execution shall be made under sub rule 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”.
6. It follows that the requirements an applicant needs to satisfy for stay of execution to be granted are;
 1. Whether the applicant shall suffer substantial loss
 2. Whether the application has been made without unreasonable delay
 3. Security

Whether the applicant shall suffer substantial loss

7. The decretal sum is Ksh 414,00/- and the same is a substantial amount. In the case of *G. N. Muema P/A (sic) Mt. View Maternity & Nursing Home v Miriam Maalim Bisbar & another* [2018] eKLR, the Court stated as follows:-

“It was the considered view of this court that substantial loss does not have to be a lot of money. It was sufficient if an applicant seeking a stay of execution demonstrated that it would have to go through hardship such as instituting legal proceedings to



recover the decretal sum if paid to a respondent in the event his or her appeal was successful. Failure to recover such decretal sum would render his appeal nugatory if he or she was successful.”

8. The applicant will suffer irreparable loss if the appeal succeeds and the respondent is unable to refund the sum. On the other hand, the respondent shall not be prejudiced if the orders of stay are issued as if the appeal succeeds he shall be compensated by interest on the judgement sum.

Whether the application was filed without unreasonable delay

9. The impugned decision was delivered on 18th November 2022 and the application was filed on 22nd December 2022. It is my considered view that it was timeously filed.

Security

10. The applicant has offered to provide security in form of a bank guarantee and provided evidence of the same vide annexure JNM3.
11. In the premises I find that the application is merited. There shall be stay of execution on the judgment and decree of the subordinate court in the subordinate court Eldoret Small Claims Court Case No. E162 of 2022 -2022 (*Priscilla Waithera Njoroge v Eldoret Express Limited*) pending the hearing and determination the appeal on the following conditions;
 1. The decretal sum being Ksh 414,100/- shall be secured by way of a Bank Guarantee executed by the Appellants with Family bank within 30 days of this ruling
 2. In the event of failure to comply with order 1 above stay of execution orders shall automatically be vacated and the Respondent shall be at liberty to proceed with execution of the decree.
12. The costs of the application are awarded to the respondents.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 30TH DAY OF MARCH 2023

.....

R. NYAKUNDI
JUDGE

