



**Crown Petroleum Kenya Ltd v Mwangi (Civil Appeal  
E048 of 2022) [2023] KEHC 20858 (KLR) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20858 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E048 OF 2022  
GMA DULU, J  
JULY 25, 2023**

**BETWEEN**

**CROWN PETROLEUM KENYA LTD ..... APPELLANT**

**AND**

**PAUL WAIHAKA MWANGI ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion dated May 29, 2023 filed by the applicant Crown Petroleum (K) Ltd through counsel Murimi, Ndumia, Mbago & Muchela Advocates.
2. The application was filed under order 42 rule 6 of the [Civil Procedure Rules](#) and section 3A of the [Civil Procedure Act](#) (cap.21), and seeks the following orders:-
  1. (Spent)
  2. (Spent)
  3. That the honourable court be pleased to stay the judgment decree pending the hearing and determination of the instant appeal preferred against the aforesaid judgment/decree.
  4. That the costs of this application be provided for.
3. The application has grounds on the face of the Notice of Motion that judgment in Voi CMCC No. E141 of 2021 was pronounced on 11th October, 2022, that an application for stay of execution was dismissed by the trial court on May 16, 2023, that the appeal herein has appreciable chances of success, and that if stay sought is not granted the appeal will be rendered nugatory.
4. The application was filed with a supporting affidavit sworn on May 29, 2023 by Kevin Kitavi a Senior Legal Officer of Mua Insurance (K) Ltd the insurer of the applicant company, amplifying the grounds on the application.



5. The application is opposed through a replying affidavit sworn by the respondent on June 7, 2023 in which it was deponed that the application is bad in law and incurably defective, and that the affidavit sworn by Kevin Kitavi does not make out a case for stay.
6. The application was canvassed through written submissions. I have perused and considered the submissions filed by Murimi, Ndumia, Mbago & Muchela Advocates for the applicant, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
7. This being an application for stay of execution of judgment or decree pending appeal, it is governed by the provisions of order 42 rule 6 of the Civil Procedure Rules, in particular rule 6(2) provides as follows:-  
6 (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 was 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 be given by the applicant.”
8. In my view, from the facts and evidence placed before me, the application has been filed without unreasonable delay, after the dismissal of the request for stay orders by the trial court.
9. With regard to whether the applicant is likely to suffer substantial loss if the stay orders sought are not granted, I note that the trial court declined to grant stay orders. However, in accordance with the provisions of the Civil Procedure Act and Rules, this court can hear and determine a fresh application like the present one.
10. I note that this appeal is in respect of a money decree of Kshs. 300,000/= awarded as general damages, and the Memorandum of Appeal dated October 26, 2022, is challenging the quantum of damages awarded.
11. In the totality of circumstances herein, I find that if the decretal amount is paid to the respondent and the appeal succeeds, then recovery of the whole amount can be difficult thus causing substantial loss to the applicant. I will thus grant stay of execution of decree, but subject to the applicant paying the respondent part of the decretal sum Kshs. 150,000/=
12. With regard to provision of security by the applicant, in my view, the part payment of the decretal sum to the respondent paid serves as adequate security provided by the applicant.
13. Consequently, and for the above reasons, I allow the application and order as follows:-
  - i. Stay of execution of judgment/decree is hereby granted pending determination of appeal.
  - ii. The stay of execution granted above will be subject to the applicant paying the respondent through counsel part of the decretal sum Kshs. 150,000/= within 45 days from today.
  - iii. In default of (ii) above, the stay orders herein granted will automatically lapse and be of no effect.
  - iv. The costs of the application will abide the decision in the appeal.

**DATED, SIGNED AND DELIVERED THIS 25<sup>TH</sup> DAY OF JULY 2023 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**



**In the presence of:-**

Ms. Okello for the applicant

Mr. Kazungu for respondent

Mr. Otolu court assistant

