



**Kisia v Lubulellah & Associates Advocates (Miscellaneous Civil Application 1060 of 2020)
[2023] KEHC 21932 (KLR) (Commercial and Tax) (18 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21932 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION 1060 OF 2020**

**A MABEYA, J
AUGUST 18, 2023**

BETWEEN

PATRICK SAGWA KISIA RESPONDENT

AND

LUBULELLAH & ASSOCIATES ADVOCATES APPLICANT

RULING

1. Before Court is the Motion on Notice dated 28/2/2023 by the Advocate. The same is brought under Order 1 Rule 12, Order 24 Rules 1 and 3 of the Civil Procedure Rules amongst other provisions of the law.
2. The application seeks that the sum of Kshs. 2M paid into court for and on behalf of the Judgment debtor as a condition for stay be released to the decree holder.
3. The grounds thereof were that on 25/7/2022, the Court granted the judgment debtor a stay of execution on condition that he deposited a sum of Kshs. 2 million within 14 days. That he did deposit the said amount on 3/8/2022. That on 24/2/2023, the Court struck out the judgment debtor's application and discharged the stay orders. That the judgment debtor has no other known assets.
4. The application was opposed vide the replying affidavit of the judgment debtor sworn on 3/5/2023. He asserted that the application was mischievous and made in bad faith as the decree holder knew that he had already lodged an appeal against the ruling made on 24/2/2023. That if the orders sought are granted, his appeal in the Court of Appeal will be rendered nugatory.
5. The parties filed their submissions dated 8/5/2023 for the applicant and 14/6/2023 for the Judgment debtor. I have carefully considered the respective parties' contestations and the submissions.



6. It is not in dispute that the decree holder has a judgment in its favour. That on 25/7/2022 Mshila J granted the judgment debtor a conditional stay. The condition was that the judgment debtor was to deposit in Court a sum of Kshs. 2 Million which he promptly did. The said money was to be held until the hearing and determination of the application for leave to appeal and stay pending appeal.
7. The application for leave to appeal and stay pending appeal was finally heard and struck out on 24/2/2023. The Court also set aside the order of 25/7/2022 that had stayed the execution.
8. The judgment debtor contends that he has appealed against the order of this Court of 24/2/2023 and that the same has chances of succeeding. However, it is trite law that an appeal perse does not lead an automatic stay of proceedings or stay of execution (see Order 42 Rule 6). A party who wishes to exercise his undoubted right of appeal MUST apply for stay to hold back the process of execution.
9. In the present case, although the judgment debtor has already lodged a Notice of Appeal evincing his intention to appeal against the order of this Court of 24/2/2023, he has nevertheless not applied for stay of execution. There being no stay in force, I see no reason why the decree holder should be kept away from the fruits of its decree.
10. Accordingly, the application dated 24/2/2023 is hereby allowed as prayed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF AUGUST, 2023.

A. MABEYA, FCIArb

JUDGE

