



REPUBLIC OF KENYA



KENYA LAW
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**Amadi v Abere (Civil Appeal E579 of 2023)
[2023] KEHC 22958 (KLR) (Civ) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22958 (KLR)

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

CIVIL

CIVIL APPEAL E579 OF 2023

JN MULWA, J

SEPTEMBER 29, 2023

BETWEEN

AGGREY OTIENO AMADI APPELLANT

AND

FESTUS ONCHWANGI ABERE RESPONDENT

RULING

1. I have considered the applicant's application dated 7/07/2023, the affidavits in support and the Grounds of Opposition, oral arguments as well as the Memorandum of Appeal and the prayers sought by the Applicant.
2. The Application is grounded on legal provisions that do not support the main prayers for stay of execution pending Appeal, to wit, Order 42 Rule 6 of the Civil Procedure Rules.
3. In addition, the applicant at its prayer No. 4 seeks stay of the judgment entered on 2/06/2023 by the trial court and all consequential orders against the appellant/applicant pending hearing and determination of the Appeal.
4. Looking at the Memorandum of Appeal dated 30/06/2023, the appellant seeks at its prayer (a) that the Appeal be allowed and the judgment of the learned trial adjudicator be set aside. It is not clear what the appellant wishes this appellate court to do upon setting aside the judgment of the trial court.
5. This is further clear from the grounds of opposition filed by the respondent dated 14/09/2023 that the instant application seeks orders which are strange or unknown in law.
6. Notwithstanding the conflicted and unclear pleadings by the applicant, there are execution proceedings arising from the trial court's judgment evidenced by the warrants of attachment and proclamation dated 31/08/2023. The amount demanded therein is Kshs. 821,199/=.



7. It is further noted that the applicant has not offered any security for the due performance of the decree pending hearing and determination of the Appeal, nor demonstrated any substantial loss that may be occasioned to the appellant should the court deny the orders sought.
 8. Order 42 Rule 6(1) Civil Procedure Rules provides that despite noncompliance with Rule 6(1), the court may still consider a stay of execution before it under Rule 6(2) if it deems fit and just.
 9. However, Rule 6(2) provides the conditions that an applicant ought to comply with for an order of stay of execution to be granted thus;
 - 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;
 - 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.
- See *HalaL & another v Thornton & Timpin* (1963) eKLR; (1990) eKLR, [RWW v EKW](#) (2019) eKLR among others.
10. Upon consideration of the legal provisions stated above and relevant authorities it is evident that the applicant has failed to demonstrate, by furnishing the court material facts on what substantial loss may be occasioned to the applicant in the very casual manner of the pleadings by his advocates.
 11. For the glaring omissions and commissions by the applicant I find no merit in the application dated 7.7.2023 and proceed to dismiss the same with costs to the respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 29TH DAY OF SEPTEMBER, 2023.

JANET MULWA

JUDGE

