



**Harmo Engineering & Building Contractor v Santram Hardware Wholesalers Ltd & another
(Civil Appeal E126 of 2022) [2022] KEHC 16769 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E126 OF 2022
RN NYAKUNDI, J
DECEMBER 23, 2022**

BETWEEN

HARMO ENGINEERING & BUILDING CONTRACTOR APPELLANT

AND

SANTRAM HARDWARE WHOLESALERS LTD 1ST RESPONDENT

**RICHARD WAINAINA T/A SEVENTY-SEVEN AUCTIONEERS 2ND
RESPONDENT**

RULING

1. The applicant approached this court by way of notice of motion dated October 24, 2022 seeking the following orders;
 1. Spent
 2. Spent
 3. Pending the hearing and determination of the suit there be stay of execution of the decree in Eldoret Chief Magistrate's Court Civil Suit No 656 of 2014.
 4. Costs be in the cause.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of said application.
3. The applicant's case is that it was the defendant in Eldoret Chief Magistrate's Court Civil Suit No 656 of 2014 where it filed an application dated 9/4/2022 in the subordinate court seeking to have judgement and decree of the court stayed pending hearing of the application and determination of HCCA No E050 of 2022. The appellant filed another application in the subordinate court dated 26/5/2022 seeking stay of the sale of its attached items and to have the attached items be released



on running attachment and finally that the attachment of the property be set aside. On August 30, 2022 the honourable magistrate made a ruling on both applications. The magistrate dealt with an application which was not the subject of the application she was dealing with. She arrived at a decision that the attachment and execution proceedings were competent, regular and proper. The decision was unjust, unfair and inequitable. The applicant being dissatisfied with the decision of the trial court instituted an appeal and filed the present application.

4. The applicant contends that the appeal was filed in this matter Eldoret HCA No E126 of 2022 on September 9, 2022. The same was filed in time. The appellant/applicant has therefore satisfied the 1st condition as the appeal is pending hearing and determination in this honourable court. Further, that the decision subject of the appeal was filed on August 30, 2022 and the application was filed on November 1, 2022. Therefore, it was filed without unreasonable delay.
5. The decretal/award sum is Kshs 4,202,814/= which is a substantial amount of money. The appellant/applicant therefore stands to suffer substantial loss if stay of execution of the decree/ award is not granted. This is the kind of money which if paid will disrupt normal functioning of the appellant/applicant.
6. The applicant is willing to abide by the terms the honourable court may order. In other words, my lord the appellant/applicant is ready and willing to provide security for the due performance of the decree.
7. The appellant/applicant however prays for unconditional stay of decree. The decretal/award sum is Kshs 4,202,814/= which is a substantial amount of money. The appellant/applicant therefore stands to suffer substantial loss if stay of execution of the decree/ award is not granted. This is the kind of money which if paid will disrupt normal functioning of the appellant/applicant.
8. The applicant is willing to abide by the terms the honourable court may order. In other words, my lord the appellant/applicant is ready and willing to provide security for the due performance of the decree. The appellant/applicant however prays for unconditional stay of decree.

Analysis and Determination

9. The legal basis for grant of stay pending appeal is order 42 rule 6 of the [Civil Procedure Rules](#), 2010. Basically, the applicant is required to demonstrate that:

“Substantial loss may result unless the order is made; the application has been mad without unreasonable delay; such security as the court orders for the due performance of the decree has been given before the applicant”

10. I have considered the submissions of counsel and I am inclined to agree that the decretal amount is quite substantial and could occasion substantial loss if the orders sought are not granted. The judgment was delivered August 30, 2022 and the application filed on November 1, 2022, therefore the same was filed without unreasonable delay. The applicant has offered to abide by any conditions of security.
11. In the premises the application for stay of execution pending appeal is merited. I hereby grant the applicant stay on the condition that it deposit half the decretal sum in a joint interest earning account in the names of the advocates of the applicant and the 1st respondent. Costs will be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ELDORET THIS 23TH DAY OF DECEMBER, 2022

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R. NYAKUNDI
JUDGE

