



**Masore Nyang'au & Co Advocates v Supplies and Services Limited
(Environment and Land Miscellaneous Application 122 of 2016)
[2022] KEELC 15668 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 15668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 122 OF 2016
LN MBUGUA, J
SEPTEMBER 22, 2022**

BETWEEN

MASORE NYANG'AU & CO ADVOCATES APPLICANT

AND

SUPPLIES AND SERVICES LIMITED RESPONDENT

RULING

1. Vide a ruling delivered by this court on July 21, 2022 judgment was entered in favour of the applicant advocate against the respondent client in the sum of Kshs 2,912,907.16 in terms of the certificate of the taxation dated April 5, 2019 together with interest thereof at 14% from February 8, 2017 until payment in full.
2. The client has now filed 2 applications before this court one dated July 25, 2022 where he is seeking an order of stay of execution of the said judgement and any decree emanating there from pending the appeal. The applicant avers that he has already filed a notice of appeal to that effect. The other application is dated September 15, 2022 primarily seeking an order of stay of execution of the decree and warrants issued by this court and that the said warrants be set aside.
3. The advocate has filed a replying affidavit dated August 12, 2022, grounds of opposition as well as a notice of preliminary objection both dated September 20, 2022 where he avers that the order sought in the application of September 15, 2022 had already been sought on July 21, 2022. Thus the court has no jurisdiction to determine the application of September 15, 2022.
4. I have considered all the issues raised herein including the respective submissions of the parties. The relief of stay of execution pending appeal is governed by order 42 rule 6 of the *Civil Procedure Rules*. In the case of *Loise Khachendi Onyango v Alex Inyang'u & another* [2017] eKLR, the court held that the relief of stay of execution is discretionary and it is only granted where sufficient cause has been



shown. Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interest of different parties but within the confines of the law to ensure that the ends of justice are met – see *Equity Bank Ltd v West Link MBO Ltd* – Civil Application No 75 of 2011.

5. I have taken into account that on July 21, 2022 when the court entered judgment against the client the stay which was being sought at that time was anchored on nothing as there was no proposed event that was to take place. Now there is as the client avers that he has an intention to appeal which intention has been manifested by the filing of a notice of appeal. Nevertheless, I find nothing to indicate that there are any irregularities in the issuance of the warrants.
6. I have also taken into consideration that the client is ready to deposit 30% of the amount due of which the sums due now stand at 4,996222.87 as per the submissions advanced by the client.
7. This court is not the platform to consider the validity of the proposed appeal. Thus I will say no more on whether the client ought to obtain leave or not. Needless to say that the orders given by the court on July 21, 2022 relate to the entry of a judgment.
8. In the circumstances, I deem it fit to grant the following orders.
 - i. The court grants a conditional stay whereby the client is directed to deposit Kshs 2,912,906 in this court within a period of 30 days failure to which the orders of stay of execution shall lapse.
 - ii. The client shall meet the costs of the 2 applications including any costs related to the execution of the decree herein.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N MBUGUA

JUDGE

In the presence of:-

Ingutya for client.

Masore for the advocate

Court Assistant: Eddel.

