



Masore Nyang’au & Co. Advocates v Supplies & Services Limited (Environment and Land Miscellaneous Application 286 of 2021) [2022] KEELC 14488 (KLR) (27 October 2022) (Ruling)

Neutral citation: [2022] KEELC 14488 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 286 OF 2021
LN MBUGUA, J
OCTOBER 27, 2022

BETWEEN

MASORE NYANG’AU & CO. ADCOCATES APPLICANT

AND

SUPPLIES & SERVICES LIMITED DEFENDANT

RULING

1. Before me is an application dated October 3, 2022 where the applicant client seeks orders of stay of execution of the judgment and decree herein pending the hearing and determination of the appeal. The applicant avers that it was dissatisfied with the judgment, hence the intention to appeal and to this end, they have duly filed a notice of appeal. The applicant avers that their appeal has high chances of success, and if successful, the same may be rendered nugatory if the orders are not granted. The applicant is ready and willing to abide by any conditions set out by the court.
2. The application is opposed *vide* the grounds of opposition and a replying affidavit both dated October 11, 2022 where it is argued that there is no automatic right to appeal, since leave to appeal ought to have been sought. The advocate contends that he is capable of restitution in the event the appeal is successful.
3. I have considered all the arguments raised herein. The relief of stay of execution pending Appeal is governed by order 42 rule 6 of the *Civil Procedure Rules*, and the same is discretionary. See *Loice Khabendi Onyango v Alex Inyangi & another* [2017] eKLR.



4. In the case of *Equity Bank Limited v West Link MBO Limited* Civil Application no 78 of 2011 cited in *Dickson Muricho Muriuki v Timothy Kagonda Muriuki & 6 others* [2013] eKLR, it was held that;

“Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure the ends of justice are met”.

5. The issue of the validity and strength of the appeal is not the province of this court. It is enough that the applicant/client has made his intention to appeal vide the alleged notice of appeal.

6. I proceed to give a conditional stay of execution of the Judgment in the following terms:

1. An order of stay of execution of the judgment herein is given for a period of 90 days.
2. The applicant is directed to deposit the sum of ksh. 580,191 in court within a period of 21 days otherwise the orders of stay shall lapse.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Masore for the Advocate

Ingutya for Client

Court assistant: Eddel

