



Axel Manufacturing and Engineering v Kenya Airports Authority & 4 others (Environment & Land Case 440 of 2018) [2025] KEELC 1161 (KLR) (12 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1161 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 440 OF 2018**

**JA MOGENI, J
MARCH 12, 2025**

BETWEEN

AXEL MANUFACTURING AND ENGINEERING PLAINTIFF

AND

KENYA AIRPORTS AUTHORITY 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

DIRECTOR OF SURVEYS 4TH DEFENDANT

DIRECTOR OF PHYSICAL PLANNING 5TH DEFENDANT

RULING

1. The Application by the Plaintiff/Applicant is dated 10/06/2024 and is brought under Order 40 (1) and 50(1) of the [Constitution of Kenya](#) 2010, Sections 1A, 1B and 3A of the [Civil Procedure, Act](#) Cap 21 Laws of Kenya, Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of the law seeking the following orders:-
 - a. Spent.
 - b. That there be a temporary stay of execution of the Judgment delivered by this Honorable Court on 16th May 2024 together with all consequential orders ensuing therefrom pending the hearing and determination of this Application inter partes.
 - c. That this Honorable Court be pleased to stay execution of the Judgment delivered by this Honorable Court on 16th May 2024 together with all consequential orders ensuing therefrom pending the hearing and determination of the Appeal.
 - d. That the costs of this Application be in the Appeal.



2. The grounds are that the Applicant intends to lodge an appeal against the whole and entirety of the Appeal being dissatisfied with the Judgment. The Appellant will suffer substantial loss if the 1st Defendant demolishes/removes the Applicant's structures as was decreed in the Judgment delivered on 16/05/2024. The Applicant is willing to provide security as and when ordered by the Court.
3. The Application is opposed, the 1st Defendant filed Grounds of Opposition dated 4/10/2024 and averred that the Application laces merit and is intended to deny the 1st Defendants immediate access to the fruits of the Judgment in its favour. That infact the Applicant has no arguable appeal and at the same time the Applicant has not met the requirements envisaged under Order 42 Rule 6(2) of the [Civil Procedure Rules 2010](#).
4. The 1st Defendant avers that the Applicant has not shown any loss that they are likely to suffer and no security has been provided. It is his contention that the Court has to balance the rights and interests of both parties in considering the Application for stay. In so doing, the execution of one party's right should not defeat or derogate the right of the other.
5. It is the 1st Defendant's averment that the Applicant has used the property of the 1st Defendant for a very long time and prolonging the status would be unfair. That the Application is an abuse of the Court process and the same should be dismissed with costs because no sufficient reasons have been provided to warrant the Court exercising its discretion.
6. It is instructive to note that only the 1st Defendant filed a response to the Application.
7. The Application was canvassed by way of written submissions. The Plaintiff/Applicant's submissions are dated 14/10/2024 and the 1st Defendant's submissions are dated 6/11/2024.

Determination

8. I have carefully considered the Application and the submissions herein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the [Civil Procedure Rules](#) as follows:

“No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order and whether the Application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred, shall be at liberty, on an Application being made, to consider such Application and to make such orders thereon as may to it seem just, any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have the orders set aside.”

9. Order 42, rule 6 states:

“No order for stay of execution shall be made under sub-rule (1) unless:-

- 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; and
- 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.”



10. The Applicant needs to satisfy the Court on the following conditions before they can be granted the stay orders:
1. Substantial loss may result to the Applicant unless the order is made.
 2. The Application has been made without unreasonable delay, and
 3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the Applicant has been given by the Applicant.
11. The principles governing the exercise of the Court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the Applicants must show that they have an arguable appeal; and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of *Reliance Bank Ltd (In Liquidation) v Norlake Investments Ltd* – Civil Appl. No. Nai. 93/02 (UR), thus:
- “Hitherto, this Court has consistently maintained that for an Application under rule 5(2) (b) to succeed, the Applicant must satisfy the Court on two matters, namely:-
1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
 2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”
12. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange v Richard Nyagaka Tongi & 2 Others* eKLR where the Learned Judges stated the principles to be applied in considering an Application for stay of execution as thus:-
- “.... The law as regards Applications for stay of execution, stay of proceedings or injunction is now well settled. The Applicant who would succeed upon such an Application must persuade the Court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the Application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated”
13. In the case of *Mohamed Salim T/A Choice Butchery v Nasserpuria Memon Jamat* (2013) eKLR, the Court stated that:-
- “That right of appeal must be balanced against an equally weighty right, that of the Plaintiff to enjoy the fruits of the Judgment delivered in his favour. There must be a just cause for depriving the Plaintiff of that right”
14. We are further guided by the decision in *Carter & Sons Ltd v Deposit Protection Fund Board & 2 Others* Civil Appeal No. 291 of 1997, at Page 4 as follows:
- “... the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay ... the Applicant must establish a sufficient cause; secondly the Court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the



Applicant must furnish security, and the Application must, of course, be made without unreasonable delay.”

15. From the grounds of the Application are that, the Applicant/Plaintiff was aggrieved by the Judgment of this Honorable Court on 16th May 2024. I find that the Defendant has not fulfilled any of the grounds to enable me grant the stay. Indeed the appeal has not been filed. I find the Application dated June 10, 2024 has no merit and I dismiss it with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 12TH DAY OF MARCH 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In presence of: -

.....for the Plaintiff/Applicant.

.....for the 1st Defendant/Respondent

.....for the 2nd Defendant/Respondent

.....for the 3rd Defendant/Respondent

.....for the 4th Defendant/Respondent

Melita..... Court Assistant

.....

MOGENI J

JUDGE

