



**Reli Savings and Credit Co-operative Society Limited v Sinohydro Corporation Limited
(Environment and Land Case 90 of 2015) [2025] KEELC 4990 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4990 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE 90 OF 2015**

**SO OKONG'O, J
JULY 3, 2025**

BETWEEN

**RELI SAVINGS AND CREDIT CO-OPERATIVE SOCIETY
LIMITED PLAINTIFF**

AND

SINOHYDRO CORPORATION LIMITED DEFENDANT

RULING

1. The full facts of this suit are set out in the judgment delivered herein on 28th January 2025. In summary, the Plaintiff brought this suit on 14th April 2015 seeking among other reliefs; a permanent injunction restraining the Defendant, its agents, representatives, assigns or any other persons acting through its direction from trespassing upon, continuing to trespass upon, excavating murram or in any other way interfering with the Plaintiff's possession and use of all that parcel of land known as Kanyakwar Residential Plots/Kisumu Block 17 (hereinafter referred to as "the suit property"), repair and restoration of the suit property to its condition prior to the Defendant's trespass, compensation for violation of the Plaintiff's right to property, degradation of the suit property and trespass.
2. The Plaintiff averred that it was the lawful owner of the suit property and that the Defendant entered the suit property without its permission and engaged in mining and excavating murram therefrom in violation of the Plaintiff's constitutional right to own property. The Plaintiff averred that in the process of excavating and mining the murram, the Defendant degraded and destroyed the suit property. The Plaintiff averred that the damage caused by the Defendant's activities on the suit property was severe and would require a substantial amount of money to remedy.
3. The Defendant entered an appearance and filed a defence on 24th June 2015 in which it denied that the Plaintiff was the lawful owner of the suit property and that it had trespassed on the suit property as claimed by the Plaintiff. The Defendant admitted that it was excavating murram but contended that its operations were being undertaken on a different parcel of land that the Plaintiff did not own. The



Defendant averred that the Plaintiff's suit disclosed no cause of action against it and urged the court to strike it out.

4. The suit was first heard by Ombwayo J. when only the Plaintiff's witnesses gave evidence. Ombwayo J. considered the Plaintiff's claim based on the evidence on record and entered judgment for the Plaintiff against the Defendant in the sum of Kshs. 317,000/- on 18th March 2022. On application by the Defendant, the said judgment was set aside on 12th June 2023, the Plaintiff's case was re-opened and the Defendant was allowed to defend the suit. The judgment was set aside and the Defendant granted leave to defend the suit on condition that it deposited in an interest-earning bank account in the joint names of the advocates for the parties a sum of Kshs. 50,000,000/- as security, which condition was met by the Defendant.
5. The hearing of the suit resumed before me on 12th February 2024. I took further evidence from the Plaintiff's witness and the evidence of the Defendant's witnesses. In a judgment delivered on 28th January 2025, the court found that the Plaintiff had established that it was the lawful proprietor of the suit property and that the Defendant had trespassed on the suit property and caused damage to the same. The court held that the Plaintiff was entitled to compensation for its loss. The court stated that while assessing reasonable compensation payable to the Plaintiff, it would consider the costs of rehabilitating/reclaiming the degraded land and the fact that the Plaintiff had, for several years, been unable to put the land to any use. In conclusion, the court entered judgment for the Plaintiff against the Defendant for;

- “ 1. A permanent injunction restraining the Defendant, its agents, representatives, assigns or any other persons acting through its direction from trespassing upon continuing to trespass upon, excavating murram on or in any other way interfering with the Plaintiff's possession and use of all that parcel of land known as Kanyakwar Residential Plots/Kisumu Block 17.
2. Kshs. 130,000,000/- as general damages for trespass together with interest at court rates from the date hereof until payment in full.
3. The costs of the suit.”

6. What is now before me is the Defendant's Notice of Motion application dated 27th February 2025, seeking an order of stay of execution of the judgment delivered on 28th January 2025 pending the hearing and determination of the intended appeal to the Court of Appeal on such terms as may appear just to the court. The application which was supported by the affidavit of the Defendant's Business Coordinator, Wang Xiaoxiao was brought on several grounds. The Defendant averred that judgment was entered against the Defendant in the sum of Kshs. 130,000,000/- together with interest. The Defendant averred that it was dissatisfied with the judgment and had filed a notice of its intention to challenge the judgment in the Court of Appeal. The Defendant averred that the Plaintiff had already taxed its Bill of Costs and could execute the judgment at any time. The Defendant averred that if the judgment was executed, its business would grind to a halt resulting in great financial loss. The Defendant averred that it was undertaking several projects in Kenya which stood the risk of stalling resulting in breach of its contractual obligations. The Defendant averred that if the stay sought was not granted, its appeal if successful, would be rendered nugatory. The Defendant averred that it was ready to abide by any terms the court could impose as a condition for granting the stay order. The Defendant averred that it had already deposited as security a sum of Kshs. 50,000,000/- which could continue to be held as such pending the hearing of the appeal.



7. The application was opposed by the Plaintiff through a replying affidavit sworn by its chairman, Bob Auch on 17th March 2025. The Plaintiff averred that the Defendant was a company wholly owned by non-Kenyans. The Plaintiff averred that once the Defendant's contracts in Kenya are completed, it would leave the jurisdiction of the court and the Plaintiff would be frustrated in the enjoyment of the fruits of its judgment. The Plaintiff averred that the suit property was rendered unfit for development due to the Defendant's activities and that it was necessary for the judgment amount to be released to the Plaintiff to enable it to undertake rehabilitation of the property for development. The Plaintiff averred that the Defendant had not demonstrated that it was undertaking any project for the Government of Kenya.
8. The Plaintiff averred that it was a Sacco and had a portfolio of over Kshs. 1 billion in assets. The Plaintiff averred that it was capable of paying back the decretal sum of Kshs. 130,000,000/- should the Defendant succeed in its appeal to the Court of Appeal. The Plaintiff averred that the Defendant had not met the threshold for granting orders of stay of execution.

Analysis and determination

9. The Defendant's application was argued on 27th March 2025. I have considered the Defendant's application together with the affidavit filed in support thereof. I have also considered the replying affidavit filed by the Plaintiff in opposition to the application. Finally, I have considered the submissions by the advocates for the parties.
10. The Defendant's application was brought principally under Order 42 Rule 6 of the *Civil Procedure Rules*. Order 42 Rule 6(1) and (2) of the *Civil Procedure Rules* provides as follows:

“ 6.

- (1) No appeal or 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 application being made, to consider such application and to make such order thereon as may to it seem just, and 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 such order set aside.
- (2) 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 ultimately be binding on him has been given by the applicant.”



11. In *Kenya Shell Limited v Karuga* [1982 – 1988] I KAR 1018 the court stated that:

“It is usually a good rule to see if order XLI rule 4 of the *Civil Procedure Rules* can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.”

12. The Defendant’s application was brought about 30 days after the judgment sought to be stayed. The application was brought without unreasonable delay. I am, however, not satisfied that the Defendant is likely to suffer substantial loss if the stay sought is not granted. The court awarded the Plaintiff Kshs. 130,000,000/- as damages for the loss occasioned by the Defendant’s acts of trespass on the Plaintiff’s land. The interest was to accrue on the judgment amount from the date of judgment. The Plaintiff has placed evidence before the court showing that it is a well-established Sacco regulated by the Sacco Societies Regulatory Authority and that it has an asset base of Kshs. 1,120,873,697/- as at March 2025. In his submissions, the Defendant’s advocate admitted that in 2024, the Plaintiff made net profit of over Kshs. 70,000,000/-. I am satisfied from the evidence before me that the Plaintiff is capable of paying back the decretal sum to the Defendant if the Defendant is successful in its appeal to the Court of Appeal. I am therefore unable to see how the Defendant’s appeal would be rendered nugatory or how the Defendant would suffer substantial loss if the stay sought is not granted. The Defendant had claimed that it was undertaking several projects for the Government of Kenya that would come to a halt should the decretal amount be recovered from it through execution. As rightly submitted by the Plaintiff, no evidence of such projects was placed before the court. In the circumstances, I am not satisfied that a case has been made for the grant of the orders sought. I have, however, taken note of the fact that the sum of Kshs. 130,000,000/- is substantial by all accounts, and if paid at once, may put a strain on any company’s finances. Although this is not a ground for granting a stay, I will exercise my discretion given that fact to grant the Defendant a stay in respect of part of the decretal sum.

Conclusion

13. In conclusion, I hereby make the following orders in the matter;

1. The application dated 27th February 2025 is allowed in part.
2. The sum of Kshs. 50,000,000/- deposited in the joint account of the Plaintiff’s and the Defendant’s advocates, together with interest that has accrued thereon, shall be released to the Plaintiff forthwith in settlement of part of the decretal amount.
3. There shall be a stay of execution in respect of the balance of the decretal amount for 24 months from the date hereof unless extended by the court for good reason, or until the hearing and determination of the intended appeal to the Court of Appeal whichever comes earlier.
4. The Defendant shall file in court as security within 30 days from the date hereof, with a copy to the Plaintiff’s advocates, an irrevocable guarantee from a licensed Commercial Bank in Kenya, undertaking to pay to the Plaintiff Kshs. 80,000,000/- or such lesser amount as may be certified by the Deputy Registrar of the court to be due to the Plaintiff as the balance of the decretal sum within 21 days of demand being made upon the said bank for payment if the Defendant loses the intended appeal to the Court of Appeal.
5. Each Party shall bear its costs of the application.



DELIVERED AND SIGNED AT KISUMU ON THIS 3RD DAY OF JULY 2025.

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing platform in the presence of;

Mr. Odhiambo h/b for Mr. Yogo the Plaintiff

Mr. Ooko for the Defendant

Mr. A. Lore-Court Assistant

