



**Advocates v RAEI Investment Limited; Wanyama & another (Interested Parties) (Environment and Land Miscellaneous Case E076 of 2023) [2025] KEELC 6097 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6097 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E076 OF 2023**

**JG KEMEI, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**EDWIN KARINGA MWANGI T/A KARINGA MWANGI & COMPANY  
ADVOCATES ..... ADVOCATE**

**AND**

**RAEI INVESTMENT LIMITED ..... CLIENT**

**AND**

**PETER MANYONGE WANYAMA ..... INTERESTED PARTY**

**MIRRIAM MUTANU KIMONDIU ..... INTERESTED PARTY**

**RULING**

1. The application is expressed to be brought under the provisions of Rule 11 (3) of the *Advocates Remuneration Order* as well as Order 42 Rule 6 of the *Civil Procedure Rules*. The Client/Applicant substantively prays for orders that;
  - a. The Honourable Court be pleased to grant leave to the Client to appeal to the Court of Appeal from the entire Ruling and Order as delivered on 31st October, 2024 pursuant to Rule 11 (3) of the *Advocates Remuneration Order*.
  - b. The Honourable Court be pleased to stay execution of its Ruling and Order as delivered on 31st October, 2024 pending the lodgment, hearing and determination of intended Appeal in the Court of Appeal.
  - c. The costs of this Application be provided for.
2. The application is based on the grounds attached thereto and the supporting affidavit sworn on the same date by Lihem Werede, the director of the Client, with full authority to do so.



3. The decision of this court issued on 31/10/24 dismissing the reference from taxation dated 15/1/24 filed by the client aggrieves the client, and they intend to appeal against the entire impugned decision. The client has filed and served its draft notice of appeal and now seeks the mandatory leave as required under Rule 11(3) of the *Advocates Remuneration Order*.
4. Unless a stay of execution is granted, there is a risk that the client will be executed to recover the full taxed and certified sum as per the taxation ruling dated 14/12/24. The advocate has already initiated the process of obtaining the court's order for execution, which renders the application nugatory.
5. Additionally, the client has presented a reasonably strong appeal with good prospects of success. The client faces the risk of judgment being entered against them for the amount of Kshs 1,810,805/- plus accrued interest, although the dispute regarding the quantum of costs remains unresolved. Furthermore, the application was filed promptly without delay, and the court was encouraged, in the interest of justice, to grant the orders sought.
6. The Advocate opposes the application through the Relying affidavit dated 13/12/24, arguing that the application is an abuse of court process because no valid notice of appeal has been filed by the Client, and the one that has been filed is fatally incurably defective. He states that the purported notice of appeal dated 12/11/24 contravenes the mandatory provisions of Rule 11(3) of the *Advocates Remuneration Order* (ARO) because it was filed without the necessary leave of the court, and therefore should be expunged from the record for being improperly filed.
7. To succeed in an application of this nature filed by the client, one must satisfy conditions such as demonstrating the substantial loss that could occur to the applicant if the order is not granted; ensuring the application is made without undue delay; and providing security as to costs.
8. The applicant has not established any grounds to claim they will suffer significant loss. The contract between the client and the purchaser states that legal fees are to be paid by the purchasers, who are the interested parties herein, and therefore the obligation to settle the fees rests with the interested party. As a result, the client will not suffer any substantial loss. Accordingly, the prayer to stop execution is not justified, as the applicant has failed to demonstrate substantial loss. It was further argued that the applicant has not provided any security for costs, which is a mandatory requirement for granting a stay of execution. Additionally, the applicant has not shown any arguable appeal with reasonable prospects of success, as no reasons were given by the taxing master under Order 11 (1) of the *ARO*. The application appears to be aimed solely at depriving him of the benefits of his judgement and undermining his entitlement to the fees already earned. Furthermore, he is not a man of straw, and should the appeal succeed, he has the financial capacity to reimburse the decretal sum without difficulty.
9. Parties elected to file written submissions which I have read and considered and wish to thank Counsel for their insightful submissions.
10. The key issue for determination is whether the application is merited.
11. On the first issue, which concerns leave to file an appeal, the parties have advanced conflicting positions regarding whether or not the applicant is entitled to do so. The Advocate has argued that the applicant proceeded to file the notice of appeal without first seeking leave, in breach of the provisions of Rule 11(3) of the *ARO*. I have reviewed the record and note that the applicant filed a draft memorandum of appeal. The court finds that the draft memorandum of appeal is not fatal.
12. The court finds that the prayer for leave is allowable.



13. Stay of Execution is provided under Order 42 Rule 6 of the *Civil Procedure Rules 2010* as follows;

“(1) No appeal or second appeal shall operate as a stay of execution or proceeding 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 may ultimately be binding on him has been given by the applicant.”

14. Flowing from the above provisions, the three conditions to be fulfilled before the Court grants orders of stay of execution may therefore be summarized as follows;

- a. that substantial loss may result to the applicant unless the order is made
- b. application has been made without unreasonable delay
- c. security as the court orders for the due performance

15. These principles were enunciated in the case of *Butt -vs- Rent Restriction Tribunal* [1979] where the Court of Appeal stated what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that: -

- a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
- b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge’s discretion.
- c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
- d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.



16. In the case of *RWW-vs-EKW* [2019] eKLR, the Court addressed its mind to the purpose of an order for stay of execution pending appeal. In so doing, it stated as follows:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however must balance the interests of the Appellant with those of the Respondent.”

16. Has the applicant demonstrated substantial loss? In the case of *Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331 the court stated that:

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.”

16. In the case of *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] eKLR the Court expressed itself as hereunder:

“... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

16. In this case, it is not disputed that the costs have been taxed, and there is a pending application before the court seeking the entry of a judgement for costs. It is therefore clear that if the stay is not granted, there will be no hindrance to the advocate prosecuting his application.

17. The court's ruling was issued on 31/10/24, and the application was filed on 14/11/24, thus in good time. It is well established that security for costs is granted at the court's discretion. However, an applicant must necessarily demonstrate to the court their willingness to specify the nature of the security they intend to provide, in accordance with the provisions of Order 45 rule 6. I will issue the final orders at the conclusion.

18. In the end, I allow the application on terms;

- a. Leave be and is hereby granted to the Client to appeal to the Court of Appeal from the entire Ruling and Order as delivered on 31/10/24 pursuant to Rule 11 (3) of the *Advocates Remuneration Order*.
- b. Stay of proceedings be and is hereby allowed in respect of the execution of the certificate of taxation issued on 24/1/24, pending the filing and determination of the intended appeal.
- c. No orders as to costs.

19. Orders accordingly

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025**

**J G KEMEI**



## **JUDGE**

In the presence of;

Mr Mapesa for the Appellant

Ms Kerubo HB for Mr Mwaniki for the 1<sup>st</sup> Respondent

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Ms Yvette - CA

