



**Ukulima Co-operative Savings & Credit Society Limited v Populite International Limited
(Environment & Land Case 1023 of 2014) [2024] KEELC 6599 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6599 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1023 OF 2014
LN MBUGUA, J
OCTOBER 3, 2024**

BETWEEN

**UKULIMA CO-OPERATIVE SAVINGS & CREDIT SOCIETY
LIMITED PLAINTIFF**

AND

POPULITE INTERNATIONAL LIMITED DEFENDANT

RULING

1. Before me is the Defendant's Notice of Motion dated 1.7.2024 seeking orders of stay of execution of the decree in this matter pending the determination of the appeal at the Court of Appeal in case no. E226 OF 2022. The application is premised on the grounds on its face and on the supporting affidavit of one Stephen Ndugu Kinuthia. The defendant contends that judgment was delivered herein on 2.2.2022 in which the suit 305 of 2015 was dismissed with no orders as to costs, while case no. 1023 of 2014 was allowed with costs.
2. That subsequently, the plaintiffs filed their Party and Party bill of costs which was due for taxation on 2.7.2024, but the applicant has already lodged the appeal which has high chances of success.
3. In opposition thereof, the plaintiffs filed a replying affidavit dated 2.8.2024 sworn by one Richard Nyaaga, who avers that, pursuant to the judgment of this court, the defendant duly refunded the sum of Ksh. 14 000 000 and the caveat placed on the suit land was removed. The bill of costs has been taxed at Ksh. 658 696.67. Thus the judgment whose execution is sought to be stayed has partly been executed, and the outstanding issue is only on costs. It is averred that the applicant has not demonstrated what substantial loss they will incur if the orders are not granted.
4. I have considered all the issues raised herein. The applicable law is order 42 rule 6 of the Civil Procedure Rules. It is trite law that a stay of execution order is generally granted if the applicant has successfully demonstrated that substantial loss may result to him unless the order is made, the application is made



without delay and there is proper security, see Feisal Amin Jan Mohammed T/A Dunyia Forwarders vs Shami Trading Co. Ltd [2014] eKLR.

5. In the case at hand, the defendant has not rebutted the claim by the plaintiff that the decree has been executed save on the issue of costs. The defendants have not demonstrated that they stand to suffer substantial loss if the order is not granted, and they have not proffered any security. Despite, the foregoing, noting that taxation of the bill only occurred in July 2024, the court proceeds to grant a conditional stay in the following terms;
 1. That the taxed costs shall be deposited in an interest earning account in the joint names of the advocates for the plaintiff and the defendant within 30 days from the date of delivery of this ruling.
 2. That the orders for stay of execution shall remain in force for a period of 90 days from the date of delivery of this ruling.
 3. That the applicant/ defendant shall meet the costs of the current application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Muuu holding brief for Mbaabo for plaintiff

Midenga for Defendant

Court assistant: Joan

