



**Planbee Contractors & General Supplies Limited & another v Monan
Ventures Limited & another (Commercial Appeal E129 of 2024)
[2025] KEHC 126 (KLR) (Commercial and Tax) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 126 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E129 OF 2024
JWW MONG'ARE, J
JANUARY 16, 2025**

BETWEEN

**PLANBEE CONTRACTORS & GENERAL SUPPLIES LIMITED 1ST
APPELLANT**

HELLEN MAKASI MUTHENGI 2ND APPELLANT

AND

MONAN VENTURES LIMITED 1ST RESPONDENT

TABITHA MUNANIE MUTWA 2ND RESPONDENT

RULING

1. What is before this court is an application filed by the Appellants under Certificate of Urgency and brought under Orders 51 Rule 1 and 42 of the [Civil Procedure Rules](#), on 14th May 2024 seeking the following prayers:-
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to stay the Ruling dated 13th May 2024 issued by Hon. Ralwings, Senior Resident Magistrate in MCCC/E13391/2023 Chief Magistrate at Nairobi Commercial Court-Milimani, Nairobi between Planbee Contractors and General Supplies Limited and Hellen Makasi Muthengi versus Monan Ventures Limited and Tabitha Munanie Mutwa pending the hearing and determination of this appeal.
 - d. That costs of this application be provided for.



2. The Application is supported by the grounds set out on its face and the supporting affidavit of Hellen Makasi Muthengi. The application is opposed and the Respondents have filed a replying affidavit of Tabitha Munanie Mutwa sworn on 1st July 2024.
3. Parties were directed to put in written submissions. While the Appellants filed their written submissions on 23rd October 2024, as at the writing of this ruling, the Respondents were yet to file their written submissions.

Analysis and Determination:

4. I have carefully considered the application alongside the supporting affidavits and the written submissions filed therein. I have equally considered the replying affidavit and note that this Appeal has been brought against an interlocutory ruling of the trial court and that the suit between the parties is yet to be determined on merit. I have reviewed the impugned ruling by the trial court and note that the Appellants/Applicants are dissatisfied with the orders directing the motor vehicle registration number KDK 710H with the Police at the Nairobi Regional Headquarters or the premises of the Directorate of Criminal Investigations Nairobi for its preservation pending the hearing and determination of the suit between the parties.
5. In bringing this application the Applicants allege that such an order will lead to wastage and vandalism of the vehicle and will greatly prejudice them and deprive them of their property. The Respondents have opposed the Application and argue that this application has been brought as a delaying tactic to avoid this matter being conclusively determined. They argue that the vehicle was involved in an accident while in the care and custody of the Applicants and the same cannot be repaired as a result of the ownership dispute between them. They argue that the vehicle is registered in their names and that they are in possession of the registration documents. They urge the court to dismiss this application and allow the suit in the Magistrates court to proceed to full trial and be determined on merit.
6. From my analysis of the applications and facts surrounding this matter I note that the applicant has moved this court under Order 42 of the Civil Procedure Rules. Specifically Order 42 Rule 6 provides as follows:-

“Stay in case of appeal [Order 42, rule 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 subrule (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.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
7. Ostensibly, this court is called upon to consider if it is necessary to interfere with the orders of the trial court at this interlocutory stage of the proceedings. As stated above, the granting of stay of execution pending appeal by the High Court is governed by Under Order 42 Rule 6 of the Civil Procedure Rules. It is grantable at the discretion of the court on sufficient cause being established by the applicant. The incidence of the legal burden of proof on matters which the applicant must prove lies with the Applicant. See the Halsbury’s Law of England, vol.17, paragraph 14: “14. Incidence of the legal burden in respect of a particular allegation, the burden lies upon the party for whom the substantiation of the particular allegation is an essential of his case.”
8. Sufficient cause being a technical as well as legal requirement will depend entirely on the Applicant satisfying the court that:-
- Substantial loss may result to the applicant unless the order is made,
 - The application has been made without unreasonable delay,
 - And 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.
9. I have considered the application before me and the arguments put forth by all the parties. I have also reviewed the ruling from which the appeal is set to emanate and the memorandum of appeal filed therein. I am not satisfied that the Applicant has established the threshold required by Order 42 of the [Civil Procedure Rules](#) for a grant of the orders sought.
10. I have also not been persuaded that the Applicant will suffer substantial loss if the orders sought herein are not granted. Noting that the Applicant has not offered any form security for costs as required by the law, the application fails on all fours to meet the tenets set out by order 42 of the Civil Procedure Rules. I therefore find and hold that the application dated 14th May 2024 is without merit. The same is dismissed and the interim orders issued herein before are vacated forthwith. Costs of the present application are awarded to the Defendant to be borne by the Applicant. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF JANUARY
2025**

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Ms. Gichuhi for the Applicants/Appellants.
2. No appearance for the Respondents.
3. Amos - Court Assistant

