



Coastlink Luxury Shuttle Co.Ltd & another v Begi & another (Civil Appeal E1412 of 2024) [2025] KEHC 1337 (KLR) (Civ) (13 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1412 OF 2024

TW CHERERE, J

FEBRUARY 13, 2025

BETWEEN

COASTLINK LUXURY SHUTTLE CO.LTD 1ST APPELLANT

THE GUARDIAN COACH LIMITED 2ND APPELLANT

AND

ANDREW MAKORI BEGI 1ST RESPONDENT

GUARDIAN COACH LIMITED 2ND RESPONDENT

RULING

Ruling On Application For Stay Of Excution

1. Judgment was entered for the 1st Respondent against the 2nd Respondent in CMCC No. 4235 of 2019. Subsequently, when motor vehicle No. KAS 219D was attached in execution of the decree thereof, the Appellants filed objection proceedings asserting ownership of the attached motor vehicle.
2. By ruling dated November 28, 2024, the trial court dismissed their objection proceedings. The dismissal prompted the Appellants to file the notice of motion dated December 4, 2024.
3. The said notice of motion which is premised under the provisions of Order 42(6)(1)(2) and 7(1), Order 51 Rule 1, and 13(2) of the Civil Procedure Rules seeks an order to stay the execution of the ruling delivered on November 28, 2024, which dismissed the objection proceedings in CMCC No. 4235 of 2019. The Appellants contend that the attached motor vehicle, KAS 219D, belongs to the 1st Appellant and that its sale would result in substantial loss, including loss of business. The Applicant further argues that the Respondent may not be able to refund the decretal sum, rendering the appeal nugatory. The application is supported by an affidavit sworn on December 4, 2024, by Julius Mokaya, the Appellants' general manager, who reiterates the grounds on the face of the application. In his



further affidavit sworn on February 7, 2025, the deponent has tendered evidence to demonstrate that the Judgment Debtor has remitted a total of KES 762,488 to the advocate for the Respondent and also paid KES 160,000 to Valley Storage Yard that was holding the vehicle after attachment—facts that were not denied by the Respondent.

4. In response, Mr. Peter Mwaura Kamau, advocate for the Respondent, opposes the application but urges that the decretal sum and auctioneer’s charges be deposited with the court in the event that the application is allowed.
5. I have considered the application in the light of affidavits on record and annexures thereto.
6. The principles for a stay of execution pending appeal under Order 42 Rule 6(1) Civil Procedure Rules (Rules) were enunciated by the Court of Appeal in *Butt v Rent Restriction Tribunal* [1979] eKLR and they require the court to satisfy itself that:
 - a) The application has been made without unreasonable delay
 - b) The applicant has an arguable appeal with a probability of success
 - c) The applicant shall suffer substantial loss if the stay is not granted; and
 - d) The security for due performance of the decree has been provided.
7. These principles were reiterated by the Supreme Court in the *Board of Governors, Moi High School, Kabarak & Another v. Malcom Bell* SC Petition No. 6 & 7 of 2013, [2013] eKLR and affirmed in *Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others*, Application No. 5 of 2014, [2014] eKLR that an appeal or intended appeal must be arguable and not frivolous, that unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory and in the context of *the Constitution* of Kenya, 2010, that it is in the public interest that the order of stay be granted.
8. From the record, it is apparent that the Appellants seek to stay a negative order that dismissed their objection proceedings.
9. A negative order directs a party to refrain from doing something, such as an injunction prohibiting certain actions. The Court of Appeal in *Western College of Arts and Applied Sciences v. E.P. Oranga & 3 Others* [1976] eKLR held that a stay of execution is not available where the Court has declined to issue judicial review orders, as a refusal to issue the orders cannot be “executed.”
10. Similarly, in *Jennifer Akinyi Osodo v. Boniface Okumu Osodo & 3 Others* [2011] eKLR, the same Court emphasized that a dismissal order is a negative order incapable of execution or being stayed. Additionally, in *Mukiri & 2 Others v. Karimi (Civil Application E002 of 2023)* [2023] KECA 1644 (KLR) (26 May 2023), the same Court observed that an order dismissing an application is inherently a negative order, as it does not compel any party to take action but rather denies the relief sought. The court further stated that such orders are generally incapable of execution, except perhaps for the aspect of costs.
11. In the present case, the Appellants seek to stay the execution of a ruling that dismissed their objection proceedings. This is a negative order, as it does not compel the Appellants to take any action. As established in the aforementioned cases, a stay of execution is not available where the Court has issued negative orders, since a refusal to issue the orders cannot be “executed” except for costs.
12. Applying the abovementioned principles to the present case, I find that the Appellants have not met the threshold for grant of stay of execution pending appeal.
13. Based on the foregoing analysis, it is hereby ordered:



1. The notice of motion dated December 4, 2024, for an order of stay of execution is not merited and it is hereby dismissed.
2. The sum of KES. 562,448/- deposited with the court on behalf of the Appellants shall be released to their advocate forthwith
3. Mention before the Deputy Registrar of this court on 27th March 2025 to confirm the filing of the record of appeal
4. Costs shall abide by the outcome of the appeal

DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellants - Ms. Kwamboka for Mose Nyambega & Co. Advocates

For Respondent - Mr. Kamau for Kamau Mwaura & Co. Advocates

