



**Eagleline Rentals Ltd v Gachukia & 3 others (Civil Appeal E752 of 2023)  
[2025] KEHC 2108 (KLR) (Civ) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2108 (KLR)

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

**CIVIL  
CIVIL APPEAL E752 OF 2023**

**JN MULWA, J  
FEBRUARY 6, 2025**

**BETWEEN**

**EAGLELINE RENTALS LTD ..... PLAINTIFF**

**AND**

**PATRICK MUIRU GACHUKIA ..... 1<sup>ST</sup> RESPONDENT**

**BOSSMAN INTERNATIONAL ..... 2<sup>ND</sup> RESPONDENT**

**BENSON BETHWEL KARANJA ..... 3<sup>RD</sup> RESPONDENT**

**CECILIA WAIRIMU KARANJA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By a judgment dated 28/10/2022 the Small Claims Adjudicator Hon. B. J. Ofisi SRM delivered judgment in Small Claims Court case No. E4701/2022 in favour of the 1<sup>st</sup> Respondent/Claimant Patrick Muiru Gachukia in the sum of Kshs. 225,000/= plus interest and costs against the Respondents herein who were the Respondents in the trial court. The applicant/appellant in this appeal was not a party in the trial court case.

The claimant/ decree holder moved swiftly to execute the decree against the judgment debtors/ respondents through his agents Gladsom Auctioneers Ltd for a sum of Kshs. 302,968/= and Auctioneers fees of Kshs. 65,000/= as stated in the proclamation dated 9/12/2023.

2. By a motion dated 20/04/2023 before the adjudicator an entity named Eagleline Rentals Limited objecting to execution of the decree against itself filed an application as an objector to the execution proceedings on grounds that it had legal and or equitable interest on the proclaimed goods.
3. Upon the adjudicator hearing the motion, in the ruling dated 28/07/2023, found the motion devoid of merit and dismissed it with costs.



4. Being dissatisfied with the ruling of 28/07/2023, the objector moved to this court vide an application dated 28/09/2023 seeking orders of stay of execution of the decree in the small claims court pending hearing and determination of the appeal filed herein together with costs. This application is the subject of the ruling herein.
5. The motion is grounded on provisions of Order 42 Rule 6 of the *Civil Procedure Rules* and Article 159 of the *Constitution*, alongside grounds stated at its face and supporting affidavit of one Grace Wanja Karanja, a Director of the Applicant/Appellant.
6. The applicant contends that the proclamation of the applicant's properties/goods was improper in that the applicant is a different legal entity from the judgment debtors, and was not a party in the primary suit at the small claims court, had no legal or binding contractual obligations with the Respondents/Decree Holders.

It further contends that if the proclamation is not lifted and stay of execution granted, its properties will be sold resulting to irreparable loss and damage, as once sold the goods will not be recovered should the appeal be successful and argues that the appeal has high chances of success.

7. In opposition to the application, the 1<sup>st</sup> Respondent Patrick Muiru Gachukia filed grounds of opposition stating that no explanation was offered for the inordinate delay in filing the instant application; that the applicant has not demonstrated that it would suffer substantial loss should the prayers sought are denied; and that the Respondent would suffer prejudice by being denied enjoyment of its judgment fruits.

Both parties highlighted their cases before the court, which have been considered alongside the supporting and opposing affidavits.

8. The Appellant/Applicant is a limited liability company, a separate legal entity from its directors and its shareholders. It is evident that it was not a party in the primary case before the small claims court. I have carefully read the proceedings before the small claims court and the Memorandum of Appeal and Grounds of Appeal thereon dated 8/08/2023.
9. Not attempting to determine the merits of the appeal, but for purposes of determining the arguability and chances of success of the appeal, I find no established or demonstrated contractual relationship between the Appellant/Applicant, the Decree Holder and the judgment debtor.
10. The proclaimed goods and properties were so done at the premises of the applicant at Embassy House Room 319 not at the judgment debtors premises. A copy of the lease agreement of the premises has been provided to the court.
11. Further, upon looking at the proclamation notice, it is evident that it is addressed and directed to Bossman International Ltd, the 2<sup>nd</sup> Respondent, not to the Appellant/Applicant.
12. An official search from the Registrar of Companies of the applicant company shows that the 4<sup>th</sup> judgment debtor, Cecilia Wairimu Karanja is a director of the applicant company. That however does not permit a party to attach property of the company without leave of court upon a court order lifting the veil of incorporation despite the said Cecilia Wairimu Karanja, one of the judgment debtors having executed the lease agreement as a director of the applicant.
13. A limited liability company is a body corporate, a persona juridica, with separate independent identity in law distinct from its shareholders and directors as held in the old age case of *Salomon Co. Ltd v Salomon* [1897] AC 78 and applied in our jurisdiction in many decisions, among them *Victor Mabachi*



*Ɖ Anur Ɖ Nurtun Bates Ltd* [2013] eKLR, *Jian Nan Xiang v COK Fast Company Limited* [2018] eKLR.

14. To that extent therefore, the court finds and holds that the proclamation of the applicant's/appellant's property and goods is illegal, null and void.
15. The respondents by their grounds of objection fault the applicant for delay in approaching the court by about two months and further that the applicant is unlikely to suffer loss that may not be compensable in damages. The decree herein is a money decree of Kshs. 302,968/= as captured in the proclamation.
16. It is rarely that a party may suffer irreparable loss in a money decree. It has not been demonstrated that the applicant may not be able to refund the said sum should the appeal not be successful as held in *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR.
17. Further, the Court in *James Wangalwa Ɖ Another v Agnes Naliaka Cheseto* [2012] eKLR the court held that execution is a lawful process and a party seeking stay of execution must show that continued execution will irreparably negate, in this case the appeal should it be successful.  
  
See also the case of *Nguruman Limited v Jan Bonde Nielsen Ɖ 2 Others* [2014] eKLR wherein the Court of Appeal expressed itself on the threshold and requirements to be met for grant of stay of execution orders.
18. Having carefully considered the factors stated by each of the parties, the court is satisfied that the applicant/appellant meets the requirements and threshold for grant of orders of stay of execution pending hearing and determination of the pending appeal.
19. The upshot is that the Appellant's Application dated 28/09/2023 is allowed in terms of prayer no. 3 therein. Each party shall bear its own costs of the application.
20. The court notes that the Record of Appeal is yet to be filed. I direct that the Record of Appeal be filed within 45 days of this ruling with a mention for Direction on 1/04/2025.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2025.**

**JANET MULWA**

**JUDGE**

