



Gazlin Energy Ltd v Abdi (Suing as administrator of the Estate of Abdikafar Abdirahman Haji) (Miscellaneous Civil Application E817 of 2024) [2025] KEHC 1873 (KLR) (Civ) (20 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1873 (KLR)

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

CIVIL

MISCELLANEOUS CIVIL APPLICATION E817 OF 2024

TW CHERERE, J

FEBRUARY 20, 2025

BETWEEN

GAZLIN ENERGY LTD APPLICANT

AND

ABRAHAM HAJI ABDI (SUING AS ADMINISTRATOR OF THE ESTATE OF ABDIKAFAR ABDIRAHMAN HAJI) RESPONDENT

RULING

Ruling on Application for Stay of Execution

1. The Applicant has filed a Notice of Motion dated 06th September 2024, seeking the following orders:
 1. Leave for the firm of S.K. Adagala & Co. Advocates to come on record for the Applicant.
 2. Leave to appeal out of time against the judgment in CMCC 5063 of 2018 delivered on 20th August 2019.
 3. An order for stay of execution pending the hearing and determination of the intended appeal.
2. The application is supported by an affidavit sworn on 06th September 2024 by S.K. Adagala, Advocate for the Applicant, who avers that the Applicant will be prejudiced to an irreparable extent and injury if the stay is not granted and that the Applicant is willing to give deposit ½ of the decretal sum as security.
3. The Respondent has opposed the application through a replying affidavit sworn on 04th October 2024 are mainly on grounds that:
 - a. The Applicant failed to defend the claim even after being served with the plaint and summons to enter appearance.



- b. Judgment was entered on 20th August 2019, and no appeal has been filed to date.
 - c. On 15th September 2021, the Applicant was granted leave to defend the suit but again failed to do so.
 - d. The Applicant filed an application for a stay of execution on 24th October 2022, which was dismissed on the grounds of res judicata.
 - e. The Applicant filed another application for stay pending appeal on 24th October 2023, which was dismissed on 14th March 2024.
 - f. This application is an abuse of the court process as the Applicant already has subsisting orders of stay of execution issued on 09th August 2024, pending the determination of a declaratory suit filed against its insurer, African Merchant Assurance Co. Ltd, in Milimani MCCC No. E474 of 2024.
 - g. The Applicant has made deliberate efforts to frustrate the Respondent and deny him the fruits of his judgment.
 - h. There is no justification for the delay of over five years in filing the appeal.
 - i. The Applicant's financial hardship is not a sufficient ground for the grant of a stay of execution.
4. The Applicant did not file any submissions; despite being afforded an opportunity to do so but the Respondent, on the other hand, filed submissions dated 16th December 2024.
 5. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2015] eKLR held that:

An applicant must explain the reasons for the delay and demonstrate any extenuating circumstances to enable the court to exercise its discretion in their favor.
 6. In this case, the Applicant has not attempted to explain why it took over 5 years to file the appeal since the impugned judgment was delivered on 20th August 2019. The absence of any explanation for the delay renders the application fatally defective, as it fails to meet the criteria established in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231.
 7. On the issue of whether the appeal is triable, the Respondent correctly argues that the issue of jurisdiction is not triable, as it was never raised before the trial court. The Court of Appeal in *Muchinga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR held that:

Issues not raised at trial cannot be raised on appeal, as this would amount to an abuse of the court process.
 8. Similarly, in *National Bank of Kenya Ltd v John M. Mwangi* [2021] eKLR, the court reaffirmed that a party cannot introduce new evidence on appeal. The Applicant's attempt to introduce jurisdictional arguments at this stage is therefore improper and not arguable.
 9. The Respondent contends the Applicant is abusing the principle of finality of the suit and is attempting to deny him the fruits of his judgment. The Respondent refers to the case of *Muringa Company Ltd v Archdiocese of Nairobi Registered Trustees* [2019] eKLR, where the court held that the finality of a judgment must be respected and that parties should not be allowed to delay the enforcement of a valid judgment without good cause.



10. In *Kenya Breweries Ltd v. Nairobi Bottlers Ltd* [2020] eKLR, the Court of Appeal reiterated the importance of respecting the finality of judicial decisions, especially where parties have failed to take timely action to challenge those decisions.
11. Courts prioritize the enforcement of valid judgments and discourage delaying tactics. Having considered the Respondent's contention of the Applicant's conduct in filing multiple applications, a fact which is not contested, and Applicant's failure to file an appeal within a reasonable time, I am satisfied that the current application seeks to further postpone the enforcement of the judgment, undermines the finality of the judgment and is prejudicial to the Respondent.
12. Under Order 42 Rule 6 of the Civil Procedure Rules, the principles governing stay of execution are well-settled:
 1. The application must be made without unreasonable delay;
 2. The applicant must demonstrate substantial loss; and
 3. Security for the due performance of the decree must be provided.
13. In *Machira T/A Machira & Co. Advocates v East African Standard (No. 2)* [2002] eKLR, the court emphasized that:

Substantial loss is the cornerstone of stay orders, and the mere existence of execution proceedings does not amount to such loss.
14. Similarly, in *John M. Kamau v Royal Media Services Ltd* [2021] eKLR, the Court of Appeal stated that financial hardship alone is not a sufficient ground for stay.
15. The Applicant has not demonstrated any substantial loss, nor has it provided security, as required under Order 42 Rule 6(2). Furthermore, the 5-year delay in seeking relief undermines the credibility of the application.
16. Under Order 42 Rule 6(2) of the Civil Procedure Rules, an applicant seeking a stay of execution pending appeal must provide security for the due performance of the decree. The provision states:

No order for stay of execution shall be made unless the court is satisfied that sufficient security has been provided for the due performance of the decree as may ultimately be binding on the applicant.
17. In the present case, the Applicant has offered to deposit at least half of the decretal sum, as required by Order 42 Rule 6(2) of the Civil Procedure Rules. The 5-year delay in pursuing an appeal however raises serious doubts about the Applicant's commitment to satisfying the decree should the appeal fail. Courts have consistently held that security must be tangible, sufficient, and promptly availed to assure the decree-holder that justice will not be delayed indefinitely (see *Focin Motorcycle Co. Limited v Ann Wambui Wangui & Another* [2018] eKLR).
18. From the foregoing analysis, I find that the Applicant has not met the threshold for grant of stay of execution pending appeal and it is hereby ordered:
 1. Leave is granted for the firm of S.K. Adagala & Co. Advocates to come on record for the Applicant
 2. Leave to appeal out of time against the judgment in CMCC 5063 of 2018 delivered on 20th August 2019 is declined, as the Applicant has failed to explain the inordinate 5-year delay.



3. Stay of execution pending the hearing and determination of the intended appeal is declined, as the Applicant has failed to demonstrate substantial loss.
4. Costs of the application shall be borne by the Applicant.

DELIVERED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicant - Mr. Adagala for S.K.Adagala & Co. Advocates

For Respondent - Ms.Tanui for Elvis Nanda, Weka & Co. Advocates

