



REPUBLIC OF KENYA



**Kihoro v Valuers Registration Board (Civil Appeal E026 of 2024)  
[2025] KEHC 1881 (KLR) (Civ) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1881 (KLR)

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

**CIVIL**

**CIVIL APPEAL E026 OF 2024**

**JN MULWA, J**

**FEBRUARY 6, 2025**

**BETWEEN**

**JESSE KIHORO ..... APPLICANT**

**AND**

**VALUERS REGISTRATION BOARD ..... RESPONDENT**

**RULING**

1. By an Application dated 15<sup>th</sup> January 2024 brought under Section 19 of the *Valuers Act* Cap 532 Laws of Kenya, Section 1A,1B,3A of the *Civil Procedure Act* Cap 21; Order 42 Rule 6(1) & 2, Order 51 Rule 1 of the Civil Procedure Rules 2010, the Applicant sought the following orders that;
  - a. Spent
  - b. Spent.
  - c. This Honourable Court be pleased to grant the Applicant stay of execution of the decision of the Valuers Registration Board delivered on the 5<sup>th</sup> December on 5/12/2023 in the case of Caritas Microfinance Bank vs Nile Real Appraisers (EA) on the valuation of title No. Ngong/Ngong/14493 Kiserian, Kajiado County pending the hearing and determination of the Application inter-partes.
  - d. This Honourable Court be pleased to order the Respondent to publish in the Daily Nation the suspension of execution of its decision rendered on the 5<sup>th</sup> day of December 2023 till the hearing and determination of this application and the intended Appeal.
  - e. The Costs be provided in the cause.



2. The Application is premised upon the grounds set out in the application and supporting affidavit sworn on 10<sup>th</sup> January 2024 by Jesse Kihoro, the Director at Nile Real Appraisers (EA) Ltd.
3. The Deponent averred that the matter pertains to the suspension of the Applicant's license by the Respondent who are located at Ardhi House which is well within the jurisdiction of this Court.
4. The Applicant averred that the suspension of his license will not only paint him in bad light to the banks and clients but will also mean he is expelled from the panels of Valuers of these banks since he will no longer be holding a valid license.
5. The Deponent further averred that the Respondent will not be prejudiced in any way if the Application is allowed and can be compensated by costs.
6. The Respondent has not filed any response despite being served with the Application herein.

### **Analysis and Determination.**

7. Order 42 Rule 6 of the Civil Procedure Rules 2010 provides as follows;
  - “(1) No appeal or second appeal shall operate as a stay of execution or proceeding 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.”
8. The above principles were enunciated by the Court of Appeal in the case of Butt vs Rent Restriction Tribunal [1979] wherein it stated that: -
  - a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
  - b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
  - c. Thirdly, a Judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.



- d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.
9. As to whether the Application was filed without undue delay, the decision of the Valuers registration Board was delivered on the 5<sup>th</sup> day of December 2023 and the application on 15/1/2024. The Court finds that the Application has been filed without undue delay.
10. Substantial loss as defined in the case of Bungoma High Court Misc Application No 42 of 2011 - James Wangalwa & Another vs. Agnes Naliaka Cheseto where the court stated that:
- “No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors, which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
11. The Applicant contends that the import of the Respondents decision is that the Applicant will not be in the list of Valuers licenced to practice in the year 2024 which is not only calamitous to his trade’s prospects but also deleterious to his illustrious career as a valuer. Considering the reasons for the pending appeal as seen at the Memorandum of Appeal dated 29/12/2023 the court finds that the appeal may be rendered nugatory should the decision of the Board be executed.
12. Additionally, the decree is not a money decree that may be easily compensated by an award of costs, but a decree that would negatively impact the applicant in his profession as a valuer and destroy his reputation and his source of income.
13. For the foregoing and be minded that the application dated 15<sup>th</sup> January 2024 is unopposed, the court is persuaded to allow the same as prayed in terms of prayer number (C) with costs being in the cause.
14. The Appeal shall be listed for Directions before the DR of this court on 10/2/2025.

**DELIVERED SIGNED AND DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025.**

**JANET MULWA**

**JUDGE**

