



REPUBLIC OF KENYA



**Wamududa v Kenya Qatar Diaspora Savings & Credit Co-operative Society Limited (Miscellaneous Application E732 of 2023) [2025] KEHC 2078 (KLR) (Civ) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2078 (KLR)

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

**CIVIL**

**MISCELLANEOUS APPLICATION E732 OF 2023**

**JN MULWA, J**

**FEBRUARY 6, 2025**

**BETWEEN**

**HABAKKUK WAMUDUDA ..... APPLICANT**

**AND**

**KENYA QATAR DIASPORA SAVINGS & CREDIT CO-OPERATIVE SOCIETY LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines the Applicants' Notice of Motion dated 30<sup>th</sup> August 2023 brought under provisions of Article 159 of the *Constitution* of Kenya 2010, section 1A and 1B, 79G and 95 of the *Civil Procedure Act* (CPA), Order 42 Rule 6(1) and Order 50 of the Civil Procedure Rules (CPR).
2. The Applicant seeks the following orders:
  - a. Spent
  - b. Spent
  - c. That the Applicant be granted leave to file an appeal against the Ruling of the Honourable Deputy Chairperson in CTC 418 of 2020 delivered on 23<sup>rd</sup> of February 2023 in terms of the attached draft Memorandum of Appeal out of time.
  - d. That pending the hearing and determination of the intended appeal, there be stay of execution of the decree given in CTC 418 of 2020 on 22<sup>nd</sup> February, 2022.
  - e. That costs of this application be in the cause.
3. The application is supported by the Affidavit of Rev. Habakkuk Wamududa the Applicant.



4. The Applicant's case is that he is aggrieved by the ruling of the tribunal in CTC NO. 418 of 2020 Kenya Qatar Diaspora Sacco vs Rev. Habakkuk O.Wamududa delivered on the 23<sup>rd</sup> February 2023, and has since lodged an appeal challenging the ruling.
5. The Applicant filed his submissions dated 24<sup>th</sup> June, 2024 together with a bundle of authorities.  
It is the Applicant's submission that its Notice of Appeal was filed before the present application seeking leave to extend time for filing an appeal, as the Memorandum of Appeal was filed on 30<sup>th</sup> August 2023.
6. He submitted that the period of delay in the case was six months since the ruling was delivered on the 23<sup>rd</sup> February 2023 and the application to file an appeal out of time was filed on 31<sup>st</sup> August 2023, and therefore not inordinate amount of time, considering that the Applicant had made an inquiry to the Co-operative Tribunal seeking the typed proceedings in the matter on the 28<sup>th</sup> of February 2023 vide a letter addressed to the Honourable Court and a follow up letter was sent on the 12<sup>th</sup> of June 2023, only for the proceedings to be availed on 18<sup>th</sup> of June 2023.
7. It is the Applicant's further submission that, if a stay of execution is not granted and the Respondent executes the decree there will be nothing left to salvage thereafter and no amount of monetary compensation will bring back what has already been lost, showing the existence of irreparable damage.
8. The Respondent in its submissions dated 10<sup>th</sup> June 2024 reiterated the contents of its Preliminary Objection dated 18<sup>th</sup> October 2023 and urged that the application herein be dismissed with costs.

#### **Issues for Determination**

9. I have considered the application for stay, grounds thereof, supporting affidavit and annexures. I have also considered submissions together with case law cited by both counsel for their respective clients.  
The court flags only one issue for determination:-  
Whether the Applicant has met the threshold for grant of orders of stay of execution pending appeal.
10. The Principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided under Order 42 Rule 6(2) of the CPR which provides;  
No order for stay of execution shall be made under sub-rule (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.
11. Further to the above, stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in Sections 1A and 1B of the CPA, the Court is no longer limited to the foregoing provisions. Courts are now enjoined to give effect to the overriding objective in the exercise of their powers under the [Civil Procedure Act](#) or in the interpretation of any of its provisions.



12. Section 1A(2) of the CPA provides that;
- “the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective”
- while under Section 1B some of the aims of the said objectives are;
- “the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”
13. Therefore, an Applicant for stay of execution of a decree or order pending appeal is obligated to satisfy the conditions set out in Order 42 Rule 6(2) namely;
- that substantial loss may result to the applicant unless the order is made,
  - that the application has been made without unreasonable delay, and
  - that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.
14. The court, in *RWW v EKW* [2019] eKLR considered the purpose of a stay of execution order pending appeal in the following words:
- “The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
15. In his oral highlights, the Respondent by his Advocate submitted that it was not opposed to grant of stay of execution provided that the applicant provides security for the due performance of the decree and urged the court to determine the quantum.
16. The court has considered the totality of the reasons given by the applicant for failure to file his defence within the statutory period as well as the Tribunal’s ruling dated 23/02/2023 (supplied to court) denying the applicant an opportunity to have his case heard on merit. This ruling is the subject of the intended appeal. I need not say more, lest I am accused of attempting to determine an appeal yet to be filed.
17. Order 42 Rule 6 (2) of the CPR provides that a party seeking an order of stay of execution pending appeal must meet the following threshold:-
- That 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
  - Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant.
18. The purpose for provision of security is to preserve the subject of the appeal so that should it be successful, it would not be rendered nugatory by the applicant’s failure to pay the decretal sum.



19. I have considered the subject matter before the Tribunal (proceedings provided). There is an interlocutory judgment entered against the applicant on 19/09/2020. Pending was formal proof as it was not a liquidated claim. The claimant to formal proof his claim but due to the application to set aside the interlocutory judgment the formal proof has not taken place to date, the Tribunal having stayed progression of the claim by its order dated 18/03/2021.
20. As things stand, there is no final judgment entered against the applicant which would guide the court on the manner of security that it would determine at this stage. The application at hand should be looked at afresh. In such a case, the court would order the applicant to provide security, probably for costs as opposed to the due performance of the decree, for lack of a final judgment, in exercise of its unlimited discretion as held in the case of Patel v EA Cargo handling services Ltd [1974] EA 75.
21. For the foregoing In the court is called upon to determine the security to anchor the due performance of a decree from which a judgment is yet to be entered, if any, as the suit at the end of the day may as well be dismissed.
22. Upon my discretion, taking into account the peculiar circumstances of the matter, I shall determine security, not for due performance of the decree, but for costs in the intended appeal.
23. For the forestated, the applicant's application dated 30th August 2023 is allowed as hereunder:
  - a. The applicant is granted leave to file an appeal out of time. The Memorandum of Appeal shall be filed and exchanged within 7 days, and the Record of Appeal within 30 days of this ruling.
  - b. The Applicant is further ordered to deposit a sum of Kshs. 250,000/= in court as security for costs within 30 days, as opposed to security for due performance of the decree.
  - c. The Applicant is further directed to pay to the Respondent costs of the application as may be agreed or taxed by the Taxing officer of this court.

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

**JANET MULWA**

**JUDGE**

