



**Biket & another v Nyasimi (Miscellaneous Civil Application  
E570 of 2024) [2025] KEHC 2671 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2671 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E570 OF 2024**

**JN MULWA, J**

**MARCH 6, 2025**

**BETWEEN**

**ISAACK KHISA BIKET ..... 1<sup>ST</sup> APPLICANT**

**EMILY BOSIBORI NYARINGO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GEORGE MORARA NYASIMI ..... RESPONDENT**

**RULING**

1. The Applicants by a Motion dated 4/07/2024 sought an order of the court to enlarge the time within which the applicants should deposit in court security as directed by the court on 12/06/2024 upon their motion of an even date.
2. On 30/07/2024 when the motion dated 12/06/2024 came up for interpartes hearing, both counsels informed the court that the applicants had complied with the conditional stay orders by depositing the security in court. The court has taken the liberty to peruse the CTS to confirm whether the deposit was indeed made as per the court orders dated 12/06/2024. The deposit of Kshs. 500,000/= was indeed made on 22/07/2024. Prayers No. 3 of the motion is therefor spent.
3. On prayer No. 2, the applicants sought leave to file an Appeal out of time from the judgment of the trial court delivered on 2/02/2024 in SCCC No. E5007 of 2023. The decretal sum is stated as Kshs. 949,111/= in the warrants of sale of movable properties of the applicants dated 3/06/2024
4. Order 42 Rule 6 CPR provides conditions upon which an applicant must comply with for an order of stay pending appeal to be granted thus:-
  - a. Application must be filed without undue delay;



- b. Applicant must demonstrate substantial and irreparable loss or damage if order is not granted;
  - c. Security must be offered for the due performance of the decree
5. In respect thereof, and upon consideration of the rival affidavits filed by both parties, the court finds that the applicants have met the above conditions number (a) and (c) above.
6. As to substantial loss, the court in the case of Tropical Commodities Suppliers Ltd & Others v. International Credit Bank Ltd (in liquidation) 2004 2 EA 331 rendered that:-
- “Substantial loss does not represent any particular mathematical formula. Rather it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal”.
7. Further, in James Wangalwa & Another v. Agnes Naliaka Cheseto[2012] eKLR, the court expressed itself thus:-
- “... Execution is a lawful process. The applicant must establish other factors which show that execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party...”
8. Several issues have been raised in the motion; that the respondent had been paid substantial sums before judgment had been delivered, and the said amounts were not considered in the judgment; that by the intended appeal, the draft memorandum of appeal having been considered there appears to be an appeal with high chances of success and therefore to block the applicants from having their intended Appeal filed and heard would not be in the interest of substantive justice as captured in the case of Philomena Katheu Matata & Another v. Suzzaine Mwirebanda Rone [2024]eKLR.
9. Additionally it has not been show that the Respondents interests would not be taken care of should the appeal not be successful. A substantial sum of money has been deposited in court as security. There is no evidence that the balance would not be paid to the respondent should the appeal be not successful. In any event, the right of appeal to a litigant ought not to be denied if good and sufficient reasons are provided to the court.
10. In the end, the court is persuaded to allow the application dated June 12, 2024 save for prayers stated at prayer no. 5 that the applicants be granted leave to adduce further and additional evidence by producing bank and Safaricom statements to the supporting affidavit filed with the motion herein.

The applicant shall pay costs of this application to the respondent.

The record of appeal shall be filed within 60 days of this ruling.

Orders accordingly.

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

.....

**JANET MULWA.**

**JUDGE**

