



Coast Bus Mombasa Limited & another v Chepkoech (Suing as administrator and/or personal representative of the Estate of Kiplangat Koech Willy - Deceased)As Administrator And/Or Personal Representative Of The Estate Of Kiplangat Koech Willy - Deceased) (Civil Appeal E042 of 2024) [2025] KEHC 2413 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E042 OF 2024**

JK SERGON, J

MARCH 13, 2025

BETWEEN

COAST BUS MOMBASA LIMITED 1ST APPLICANT

PHILIP ARAKA 2ND APPLICANT

AND

EMMY CHEPKOECH (SUING AS ADMINISTRATOR AND/OR PERSONAL REPRESENTATIVE OF THE ESTATE OF KIPLANGAT KOECH WILLY - DECEASED)AS ADMINISTRATOR AND/OR PERSONAL REPRESENTATIVE OF THE ESTATE OF KIPLANGAT KOECH WILLY - DECEASED) RESPONDENT

RULING

1. The application coming up for determination is a chambers summons dated 1st September, 2024 seeking the following orders;
 - (i) Spent.
 - (ii) Spent.
 - (iii) That this Honourable court be pleased to order a stay of execution of the judgment/decree and costs dated 13.08.2023 pending the hearing and determination of KerichoHCCA No.E042 of2024.
 - (iv) That this Honourable court be pleased to order that the Appellant furnishes security in the form of a Bank Guarantee for 3,000,000/= which is the policy limit for the insurer pending hearing and determination of this Appeal.



(v) That the costs of this application be provided for.

2. The application is supported by the grounds on the face of it and the supporting affidavit of Mwana Amina Abdalla the Administration Manager of the 1st applicant who is the registered Owner of motor vehicle Reg. KCU 053C which forms the subject of this case, hence conversant with the facts herein thus competent to swear this affidavit.
3. He avers that he is aware the firm of M/s Kimondo Gachoka & Company Advocates was instructed by Directline Assurance Co. Ltd to act for and on their behalf in this matter.
4. He avers that judgment was delivered on 13.08.2023 in their absence whereby the Plaintiff was awarded Kshs. 7,103,302/= for Loss of dependency, Kshs. 300,000/= for loss of expectation of life, Kshs. 300,000/= for pain and suffering, Kshs. 219,450/= for special damages leaving a total of Kshs. 3,961,385/= plus costs and interest at court rates.
5. He avers that there is no stay of execution granted thus exposing them to an imminent risk of execution proceedings.
6. He avers that upon perusal of the file and analysis of the judgment together with their advocates, they were aggrieved by the said judgment and have instructed their advocates on record to lodge an Appeal against the judgment delivered on 13.08.2024 and consequently they lodged an appeal vide Kericho HCCA No. E042 of 2024.
7. He avers that it is trite law that an appeal does not operate as stay of execution and therefore his movable properties are exposed to execution proceedings by way of proclamation and attachment and that since they do not have stay of execution in force, they are apprehensive that the Respondent will proceed to proclaim their movable properties thus rendering the appeal nugatory.
8. He avers that in such an event, they stand to suffer irreparable loss and damage if the orders sought in the application herein are not granted.
9. He avers that their insurer M/s Directline Assurance Co. Ltd is ready and willing to offer security in form of a bank guarantee for Kshs 3,000,000/= which is its policy limit pending the hearing and determination of this appeal.
10. He avers that the Respondent is a person of straw and will not be able to refund the decretal sum should he execute and thereafter the appeal succeeds as his financial capabilities are unknown.
11. He avers that the applicants have to come to court within a reasonable period of time and without undue delay and that the application will not occasion any prejudice to the Respondent as the same can be compensated by an award of costs.
12. He avers that the Applicant on the other part will suffer irreparable loss and damage should it be compelled by execution proceedings to release the full decretal sum and their appeal thereafter succeeds as the Respondent is a person of straw making recovery of the decretal sum impossible.
13. The Respondent filed a preliminary objection dated 14th February, 2025 on the following grounds;
 - (i) That the application dated 1st September 2024 is a total abuse of the court process. The same is sub-judice as there exists two similar applications for stay of execution that are still pending hearing and determination before the trial Court in Kericho CMCC No.E142 of 2023 and wherein the applicants allegedly obtained orders of stay of execution on the 14th February 2025.



- (ii) Thatvide a Ruling of this Court delivered in this matter on 30th January, 2025, the Applicants were adjudged persons aimed at abusing the court process by filing numerous similar applications, and the current application is no different.
- (iii) Thatpenultimately, the application herein is thus frivolous, vexatious and a total abuse of the Court process aimed at derailing a lawful process without any justifiable cause.

- 14. The matter came up for inter partes hearing, the learned counsel for the respondent stated that he filed a preliminary objection in response to the instant application, whereas, the learned counsel for the applicant stated that in as much as she had not been served, she was willing to take a ruling date.
- 15. I have considered the application and response by the parties and I find that the issue for determination is whether a stay of execution of decree of the trial court in Kericho CMCC E142 of 2023 should be issued pending hearing and determination KerichoHCCA No.E042 OF 2024. On one part, the applicant contends that it is trite law that an appeal does not operate as stay of execution and therefore his movable properties are exposed to execution proceedings by way of proclamation and attachment and that since they do not have stay of execution in force, they are apprehensive that the Respondent will proceed to proclaim their movable properties thus rendering the appeal nugatory. On the other part, the respondent filed a preliminary objection stating that the instant application is sub-judice as there exists two similar applications for stay of execution that are still pending hearing and determination before the trial Court in Kericho CMCC No.E142 of2023.
- 16. This court has perused the file and finds that there is an application for stay of execution before the trial court and that the same is yet to be heard and determined and therefore the instant application violates the rule of sub judice, as such the preliminary objection is merited, this court cannot issue orders for stay while there is a concurrent application seeking for stay of execution in the trial court.
- 17. Consequently, the chamber summons dated 1st September, 2024 is found to be bereft of merit. It is dismissed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 13TH DAY OF MARCH, 2025

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

Miss Ongwacho for Appellant

Mwita for the Respondent

