



**Volex General Motors (K) Limited v Ukhevi (Civil Appeal  
E175 of 2023) [2025] KEHC 4784 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4784 (KLR)

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

**CIVIL  
CIVIL APPEAL E175 OF 2023**

**TW CHERERE, J**

**MARCH 6, 2025**

**BETWEEN**

**VOLEX GENERAL MOTORS (K) LIMITED ..... APPLICANT**

**AND**

**BENSON ONCHALA UKHEVI ..... RESPONDENT**

**RULING**

1. By notice of motion brought under Order 42 Rule 6(2), Order 50 rule (1) and (3) of the Civil Procedure Rules 2010 and Section 3 A of the Civil Procedure Cap 21 laws of Kenya, the Applicant seeks the following orders:
  1. An order of stay of execution of the judgement and decree dated 24<sup>th</sup> of February 2023 in Milimani CMCC No. 4464 of 2017 pending the hearing and determination this appeal (Nairobi HCCA No. E 175 of 2023)
  2. Any other or further orders to safeguard the interests of the Applicant
2. The application is based on the grounds that the Applicant is aggrieved by the judgment and has filed an appeal. It is further argued that there is an imminent risk of execution, and if the decree is executed, it will render the appeal nugatory. The Applicant avers that it is willing to deposit part of the decretal sum into an interest-bearing account in the names of both advocates as security for the due performance of the decree.
3. The application is supported by an affidavit sworn on 06<sup>th</sup> December 2024 by Mr. Peter Muturi Gicheha, the Applicant's Managing Director. He reiterates the grounds set out in the application and expresses the Applicant's willingness to provide security for the decretal sum.



4. The Respondent opposes the application based on his replying affidavit sworn on 19<sup>th</sup> February 2025 emphasizing the delay of 23 months in bringing the motion. The Respondent argues that this delay is unreasonable and that the orders sought will prejudice him by depriving him of the fruits of the judgment. He further submits that the Applicant has not shown urgency in seeking the stay.
5. In its submissions filed on 24<sup>th</sup> February 2025, the Applicant argues that the decretal sum is substantial, and its payment will have a severe adverse effect on its financial position. The Applicant claims that execution of the decree would cause substantial loss. The Applicant relies on the cases *Reliance* has been placed on *RWW v EKW* [2019] KEHC 6523 (KLR) and *New Solta Ltd v Naivasha Southlake Sacco Ltd* [2022] KEELC 1047 (KLR) asserting that the amount is too large, and its payment will irreparably damage the Applicant's operations.
6. The Applicant also submits that it has made an offer of security by way of depositing part of the decretal sum into an interest-bearing account in the names of both advocates, which it believes demonstrates its good faith and commitment to ensuring that the decree is satisfied, should the appeal fail. *Reliance* has been placed on *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR).
7. By submissions dated 28<sup>th</sup> February 2025, Respondent submitted that the Applicant is undeserving of the order of stay having moved the court 23 months after the judgment dated 24<sup>th</sup> February 2023 was delivered. The Respondent contends that the orders sought will greatly prejudice him by denying him the fruits of his judgment.
8. Having considered the application in light of the affidavits and submissions on record, the key issues that arise are:
  - a. Whether the Applicant has shown sufficient cause for the delay in bringing the application for stay of execution.
  - b. Whether the Applicant has met the conditions necessary for the grant of a stay of execution under Order 42 Rule 6 of the Civil Procedure Rules.
  - c. Whether the Respondent will suffer any prejudice if the stay is granted, and
  - d. Whether the Applicant has provided sufficient security for the due performance of the decree.

## **Analysis**

9. Order 42 Rule 6(2) of the Civil Procedure Rules provides the conditions for granting a stay of execution as follows:

“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;

  - (b) the application has been made without unreasonable delay; and
  - (c) such security as the court may order has been given by the applicant.”
10. The first requirement under Order 42 Rule 6(2) is that the application must be made without unreasonable delay. The Applicant's motion was filed 23 months after the judgment was delivered, a delay that is not adequately explained in the supporting affidavit. The Applicant merely states that it has filed an appeal and that execution would render the appeal nugatory. However, the delay of 23 months is significant, and no reasonable explanation has been provided for this long period of inaction.



11. The Courts in *James Wangalwa v Agnes Naliaka* (supra) emphasized the need to demonstrate substantial loss. In *RWW v EKW* (supra), the Court highlighted the need to preserve the subject matter in dispute to safeguard the rights of the appellant, ensuring that the appeal, if successful, is not rendered nugatory.
12. The Applicant's unexplained long delay in this case makes it difficult for the court to grant a stay as the delay lacks sufficient justification.
13. The Applicant contends that the decretal sum is large and its payment would significantly affect its financial operations. However, the claim of substantial loss remains unsubstantiated. In *RWW v EKW* (Supra), the Court stated that the Applicant must provide evidence to support the claim of substantial loss. A mere assertion that the sum is large is not enough. The Applicant has failed to provide any financial documents, such as financial statements or projections, showing how the payment of the decretal sum would adversely affect its operations.
14. Similarly, in *New Solta Ltd v Naivasha* (Supra), the Court granted the stay on the basis of substantial loss but emphasized that the Applicant must show how the enforcement of the judgment would frustrate the appeal.
15. In the current case, the Applicant has not made a strong case on how the loss would occur or its magnitude.
16. The Applicant has offered to deposit part of the decretal sum into an interest-bearing account in the names of both advocates. This offer of security is reasonable and aligns with the guidance from *James Wangalwa v Agnes Naliaka* (Supra), where the Court emphasized that the Applicant must offer security for the performance of the decree.
17. After considering the submissions and the case law, it is clear that the Applicant has not satisfied all the conditions necessary for the grant of a stay of execution. While the Applicant has offered security, the failure to provide satisfactory evidence of substantial loss or to explain the 23-month delay weakens the case.
18. Order 42 rule 6 (2) of the Civil Procedure Rules underscores the need for urgency and proof of substantial loss. The Applicant has failed to meet these requirements, and as such, the application for an order of stay of execution of the judgement and decree dated 24<sup>th</sup> of February 2023 in Milimani CMCC No. 4464 of 2017 pending appeal cannot in the circumstances of this case issue.
19. In the end,
  - a. The Notice of Motion dated 06<sup>th</sup> December 2024 is unmerited and it is hereby dismissed.
  - b. The Applicant shall bear the costs of this application.

**DELIVERED AT NAIROBI THIS 06<sup>th</sup> DAY OF March 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Applicant - Mr. Karuga for Kibatia & Co. Advocates LLP

For Respondent - Ms. Wahito for Wahito & Co. Advocates

