



REPUBLIC OF KENYA



**Barons Estate L Imite & another v Buntai (Civil Case 412 of 2018)
[2025] KEHC 4974 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 412 OF 2018
PM MULWA, J
APRIL 24, 2025**

BETWEEN

BARONS ESTATE L IMITE 1ST PLAINTIFF

DOROTHY CHEPKURUI 2ND PLAINTIFF

AND

EMILY NKIROTE BUANTAI DEFENDANT

RULING

1. The application for consideration is the Notice of Motion dated 22nd August 2024, by the judgment debtor, seeks the following orders:
 - i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of the Judgment Debtors' Appeal, there be an order of stay of the warrant of attachment of movable property issued in execution of the money decree dated 25th July 2024 and all consequential orders.
 - iv. That the costs of this application be in the cause.
 - v. That the Court be at liberty to make any such further or other orders as it may deem fit and just in the circumstances.
2. The application is supported by the grounds presented on its body and the affidavit of Emily Nkirote Buntai. She depones that on 29th September 2023, Hon. E.C. Mwita, J. delivered judgment in favour of the Plaintiffs for the sum of Kshs. 22,307,537.00 together with interest at court rates from the date of judgment until payment in full. Aggrieved by the said judgment, the Applicant has since lodged Civil



Appeal No. E192 at the Court of Appeal. In the meantime, the Plaintiffs have proceeded to obtain warrants of execution, culminating in a threatened auction of the Applicant's property. The Applicant contends that unless an order of stay is granted, she stands to suffer substantial and irreparable loss, and the appeal will be rendered nugatory. She further states that the financial standing of the decree-holders is unknown.

3. In opposition, the 1st Plaintiff, Arnod Langat, swore a replying affidavit on 28th August 2024. He challenges the jurisdiction of this Court to entertain the instant application, asserting that an appeal lies before the Court of Appeal. He further argues that the Applicant will not suffer substantial loss, this being a money decree, and faults the Applicant for failing to demonstrate her ability to refund the decretal sum should the appeal fail. He proposes that as a condition for stay, the entire decretal sum be deposited in a joint interest-earning account in the names of the parties' advocates. He also contends that the application has been brought after an inordinate delay, noting that the judgment was delivered on 29th September 2023, whereas the present application was filed nearly eleven months later.
4. Pursuant to the directions of the Court, the application was canvassed by way of written submissions, which were duly filed and exchanged by the parties.
5. I have carefully considered the application, the affidavits on record and the respective submissions by counsel. The sole issue for determination is whether the Applicant has satisfied the conditions for the grant of a stay of execution pending appeal.
6. The law governing stay of execution is set out under Order 42 Rule 6(1)(2) of the Civil Procedure Rules, which provides that:
 1. No appeal or second appeal shall operate as a stay of execution or proceedings 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 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.
7. These principles have been reiterated in various judicial pronouncements. A grant of stay of execution should only be granted where sufficient cause has been shown by the Applicant. In determining whether sufficient cause has been shown, the Court should be guided by the three pre-requisites provided under Order 42 Rule 6 of the Civil Procedure Rules (See *Loice Khachendi Onyango v Alex Inyangu & another* [2017] eKLR)
8. Concerning delay, it is not in dispute that judgment was delivered on 29th September 2023, and the instant application was filed on 22nd August 2024, approximately eleven (11) months later. The Applicant has not proffered any explanation for this delay. In my view, such delay is inordinate and inexcusable.



9. On whether substantial loss may result, the Applicant argues that unless a stay is granted, she stands to suffer irreparable harm. It is noted that the decree in question is monetary in nature. Ordinarily, execution of a money decree does not, in itself, constitute substantial loss unless there is evidence that the Respondent would be unable to refund the decretal sum should the appeal succeed. The 1st Plaintiff has disputed this claim and annexed documents, including title deeds, as evidence of his financial capacity. In *Century Oil Trading Company Limited v Kenya Shell Limited*, Nairobi [2008] eKLR, it was observed that:

“Where execution of a money decree is sought to be stayed, in considering whether the applicant will suffer substantial loss, the financial position of the applicant and that of the respondent become an issue. The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal. The court has to balance the interest of the applicant who is seeking to preserve the status quo pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruits of his judgment.”

10. In the present case, the Applicant has not provided compelling evidence to demonstrate the Respondents’ inability to refund the decretal amount. Nevertheless, in balancing the rights of the successful litigant to enjoy the fruits of judgment and the Applicant’s right to appeal, I am persuaded that the Applicant has established a sufficient basis to warrant a conditional stay, to safeguard the substratum of the appeal.

11. As to the issue of security, the Applicant has indicated her willingness to abide by any directions issued by the Court. The Respondents have proposed that the entire decretal amount be deposited in a joint interest-earning account. This position aligns with the rationale set out in *Afron C. Sharma v Ashana Raikurdalia t/a Rairi Nakalia & Co. Advocates & 2 Others* [2014] eKLR, where the Court emphasized that the purpose of security under Order 42 Rule 6 is not to punish the Judgment Debtor but to ensure the due performance of any decree that may ultimately be binding.

12. Taking the above into account and in order not to render the intended appeal nugatory, I find that it is in the interest of justice to allow the application conditionally and make the following orders:

- a. There shall be a stay of execution of judgment and decree dated 29th September 2023, pending the hearing and determination of Civil Appeal No. E192 of 2024.
- b. The Applicant shall deposit the entire decretal amount in a joint interest-earning account in the names of the advocates for the parties (in this case 1st Plaintiff & Defendant) within sixty (60) days from the date of this ruling. In default, the stay of execution shall lapse automatically without further reference to the Court.
- c. Costs of the application shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mokuia for 1st Plaintiff/Decree holder



Mr. Karanja for Defendant/Judgment debtor

Court Assistant: Carlos

