



REPUBLIC OF KENYA



KENYA LAW
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**Darson Trading Limited v Njoroge & 2 others (Civil Appeal
E1505 of 2024) [2025] KEHC 6260 (KLR) (Civ) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6260 (KLR)

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

CIVIL

CIVIL APPEAL E1505 OF 2024

TW CHERERE, J

APRIL 8, 2025

BETWEEN

DARSON TRADING LIMITED APPELLANT

AND

JANE MUTHONI NJOROGE 1ST RESPONDENT

EVANS OMARIBA MOMANYI 2ND RESPONDENT

UDDIN MIJBAH 3RD RESPONDENT

RULING

1. By a consent order dated 10th March 2025, the parties herein agreed that there be a stay of execution of the judgment delivered on 16th December 2024 in Milimani MCCC E3661 of 2022, pending the hearing and determination of the appeal, on the following conditions:
 1. That the Appellant deposits half of the decretal sum in an interest-earning account in the joint names of both counsel within 30 days from 10th March 2025.
 2. That the Appellant files and serves the record of appeal within the same 30-day period.
2. The Appellant has now approached this Court by a notice of motion dated 14th March 2025 brought under Articles 47 and 159(2)(d) of *the Constitution*, Sections 1A, 3, 3A, and 95 of the *Civil Procedure Act*, and Orders 42 Rule 2 and 51 of the Civil Procedure Rules. The Appellant seeks;
 1. Enlargement of time for compliance with the consent order by a further 60 days
 2. Stay of execution of the judgment pending determination of the appeal.



3. The application is supported by the affidavit of the Appellant’s sales manager, Niculus Ngoli Inyangala, sworn on 04th March 2025, in which the Appellant attributes non-compliance to prevailing financial hardship owing to delays in payments by its clients. The Appellant contends that the application has been brought without undue delay and expresses willingness to comply with the initial consent terms if granted additional time.
4. The 1st Respondent opposes the application through a replying affidavit sworn on 26th March 2025. She argues that the Appellant is acting in bad faith, having failed to comply with the consent despite having been granted a reasonable period. The 1st Respondent further asserts that the Appellant’s admitted financial difficulties render compliance with the security requirement all the more urgent to avoid the risk of losing the fruits of judgment.

Issues For Determination

5. From the affidavit evidence on record, I have identified the issues for determination as follows:
 1. Whether the Appellant has met the threshold for setting aside or varying a consent order
 2. Whether the application for stay pending appeal should be granted afresh.

Analysis

1. Whether the Appellant has met the threshold for setting aside or varying a consent order

6. It is trite law that a consent judgment or order has contractual effect and can only be varied or set aside on grounds which would justify the setting aside of a contract.
7. In *Hirani v Kassam* [1952] 19 EACA 131, the court stated:

“The mode of paying the debt, the security for the debt, or any other terms, can be varied by consent, but unless it is shown that the consent was obtained by fraud, collusion or mistake, it cannot be set aside.”
8. The Court of Appeal in *Flora N Wasike v Destimo Wamboko* [1988] eKLR held that:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside...”
9. In this case, the consent was entered into freely and in clear terms. The Appellant does not allege any mistake, misrepresentation, fraud, or undue influence.
10. The Appellant attributes non-compliance to financial hardship. However, no documentation has been placed before this Court to substantiate the claim of liquidity constraints. Bare averments without supporting evidence do not constitute sufficient cause. In *James Mburu Mwaura v Martha Wangui Mwangi* [2021] eKLR, the court held:

“A mere statement that one is experiencing financial difficulties without evidence does not justify a stay or variation of a consent that was voluntarily entered into.”
11. Moreover, the Appellant has not demonstrated any serious steps taken to partially comply or make alternative arrangements. The willingness to comply, without actual effort or partial compliance, appears insufficient.



2. Whether Stay Pending Appeal Should Be Re granted

12. The stay was granted conditionally, and the Appellant has defaulted. This Court is disinclined to grant a fresh stay in the absence of compliance with initial terms or compelling justification for variation. The risk that the Respondent may not enjoy the fruits of judgment, particularly in view of the Appellant's stated financial instability, outweighs the Appellant's interest in stay.

Disposition

13. The upshot is that the Appellant has not demonstrated adequate cause for varying or setting aside the consent order of 10th March 2025. In particular, the allegation of financial hardship has not been substantiated. The Court is therefore not persuaded to exercise its discretion in favour of the Appellant.

Orders:

1. The notice of motion dated 14th March 2025 is hereby dismissed.
2. Costs of the application shall be borne by the Appellant.

DELIVERED AT NAIROBI THIS 08TH DAY OF APRIL 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellant - Mr. Osoro for Osoro Juma & Co. Advocates

For 1st Respondent - Mr. Ngumba for Charles Gomba & Co. Advocates

For 2nd Respondent - N/A for Kimondo Gachoka & Co. Advocates

For 3rd Respondent - N/A

