



REPUBLIC OF KENYA



KENYA LAW
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**Kassamali v Muteti (Civil Appeal E066 of 2024)
[2025] KEHC 4591 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E066 OF 2024
AN ONGERI, J
APRIL 8, 2025**

BETWEEN

TAHER KASSAMALI APPELLANT

AND

ROSE KATUNGE MUTETI RESPONDENT

RULING

1. The application coming for considering in this Ruling is the one dated 3rd December 2024 brought under Section 1A, 1B, 3A, 63(e), 79G and 95 of the [Civil Procedure Act](#), Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Rules](#) 2010 seeking the following orders:-
 - i. The application be and is hereby certified as urgent and service be dispensed with in the first instance.
 - ii. There be a stay of execution of the Judgment and decree entered herein against the Appellant on 15th November 2024 pending the hearing and determination of this application.
 - iii. There be a stay of execution of the Judgment entered against the Appellant on 15th November 2024 pending the hearing and determination of the arguable appeal herein.
 - iv. The warrants of attachment and warrants of sale dated 25th November 2024 together with the proclamation notice be hereby set aside and or lifted.
 - v. The costs of this application be provided for.
2. The application is based on the following grounds:-
 - i. That the Appellant is dissatisfied with the Judgment of the Court entered on 15th November 2024.



- ii. That the Appellant has lodged the instant appeal herein against the said judgment herein and if the Plaintiff is allowed to execute against the Appellant, the said appeal will be rendered nugatory and will be nothing short of an academic exercise.
 - iii. The Respondent herein has proceeded to secure unlawful and irregular warrants of attachment and warrants of sale yet there is already an interim stay of execution of thirty (30) days that was granted by the court on 15th November 2024.
 - iv. That the said stay is set to lapse on 14th December 2024; the warrants of attachment and sale are dated 25th November 2024.
 - v. The Appellant's appeal herein is arguable with overwhelming chances of success based on points of law.
 - vi. That the Appellant is more than ready to abide by any conditions that this Honourable court will impose upon it as the court may deem fit and reasonable.
 - vii. The Respondent's financial ability to refund the decretal sum in the event the arguable appeal succeeds is unknown.
 - viii. That the Appellant has sufficient cause for seeking the orders sought.
3. It is supported by the affidavit of Susan Kemunto Monari in which she deposed as follows:-
- i. That I am an advocate of the High Court of Kenya practicing under the firm of Mogaka Omwenga & Mabeya Advocates herein having conduct of this matter and conversant with the matter in issue and hence competent to swear this affidavit.
 - ii. That I am aware that the Appellant is dissatisfied with the judgment delivered on 15th November 2024 and has filed the instant appeal herein.
 - iii. That I am aware that on 15th November 2024 when I attended court to collect the subject judgment in Voi SCCOMM NO. E001 of 2024, there was a Ms. Nira for the Respondent herein and she did not object to my oral application for a thirty days stay, which was then granted.
 - iv. That I am also aware that having been issued stay of execution on 15th November 2024 the same is set to expire on 14th December 2024; therefore the stay order is still in force.
 - v. That I am aware that on 3rd December 2024 my client was served via whatsapp with illegal and unlawful warrants of attachment and warrants of sale both issued on 25th November 2024 by the trial court.
 - vi. That I am also aware that the Applicant herein was also served with a proclamation dated 3rd December 2024 and an invoice of Kshs. 151,821.08 dated 3rd December 2024.
 - vii. That if the Respondent is allowed to continue with the unlawful execution, the same will greatly be prejudicial to the appellant herein who has already lodged an appeal which has very high chances of success and a very bad precedent will have been set for auctioneers/advocates/litigants to carry out illegal and unlawful execution in blatant disregard of court orders.
 - viii. That I verily believe that unless a stay of the unlawful execution of the said judgment is granted, the Appellant stands to suffer irreparably.



- ix. That it is only fair and reasonable that stay orders be granted and the lodged appeal is heard and determined to finality.
 - x. That I verily believe that the Appellant’s appeal as filed herein is arguable with overwhelming chances of success.
 - xi. That the Appellant is bound to lose substantially should the orders sought not be granted and the judgement sum will be beyond the Appellant’s reach in the event that the appeal is successful.
 - xii. That the Respondent’s financial ability to refund the decretal sum if paid out is unknown.
 - xiii. That the Appellant is ready to comply with any such conditions/terms as may be determined by this Honourable court for granting the orders sought.
 - xiv. That I swear this affidavit while urging this Honourable court to further exercise its discretionary powers in favour of the Appellant and grant the orders sought in the application herein as prayed.
4. The Respondent opposed the application on the ground that the same is geared towards frustrating the Respondent from enjoying the fruits of the judgment in SCCCOMM E001 of 2024.
 5. Further that the appeal does not raise any effective or arguable issues and is an abuse of the court process.
 6. The parties filed written submission which I have duly considered.
 7. The sole issue for determination is whether the Applicant should be granted stay of execution pending appeal.
 8. Order 42 Rule 6 (1) and (2) of the [Civil Procedure Rules](#) outlines the guiding principles to be met for the grant of stay and provides that:

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- (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 such security of costs for



the performance of such decree or order as may ultimately be binding on him has been given by Applicant.

9. I find that the applicant is willing to comply with the conditions for grant of stay.
10. It is clear that in an application for stay of execution pending Appeal, the Applicant must satisfy the following three conditions:
 1. The Court is satisfied that substantial loss may result to the Applicant unless the order is made.
 2. The application has been made without unreasonable delay.
 3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the Applicant has been given by the Applicant.
11. The application is allowed on condition that the Applicant deposits the entire decretal sum in court within 30 days of this date.
12. The warrants of attachment and warrants of sale dated 25th November 2024 together with the proclamation notice be hereby set aside and or lifted.
13. The costs of the application to abide the appeal.

DATED, SIGNED AND DELIVERED THIS 8TH APRIL 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

Munari for the Applicant

Miss Mra holding brief for Mr. Ogutu for the Respondent

