



REPUBLIC OF KENYA



KENYA LAW
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Mau Narok Nissan and Cooperative Society Ltd v Langas & 3 others (Civil Appeal E011 of 2021) [2025] KEHC 4755 (KLR) (10 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4755 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E011 OF 2021
CM KARIUKI, J
APRIL 10, 2025**

BETWEEN

MAU NAROK NISSAN AND COOPERATIVE SOCIETY LTD APPELLANT

AND

SAMMY P LANGAS 1ST RESPONDENT

PARSALOI OLE SAPURR 2ND RESPONDENT

OLOORU OLE NTETE 3RD RESPONDENT

EQUITY BANK NAROK BRANCH 4TH RESPONDENT

(Being an application for stay of execution against the judgment and decree of Hon. F. M. Gikonyo J. delivered on 28/11/2023 in Narok HCCA NO. E011 OF 2021)

RULING

1. Before this court for determination is an application dated 28/10/2024 where the respondents/applicants are seeking the following orders;
 - i. Spent.
 - ii. Spent.
 - iii. That this honourable court be pleased to issue an order of stay of execution and or implementation of all the terms of the judgment delivered on 28/11/2023 or alternatively, this honourable court be pleased to order that the status quo ante the judgment of this honorable court which was delivered on 28/11/2023 be maintained pending the hearing and determination of the applicant's appeal to the court of appeal against the whole of the said judgment.



- iv. That the costs of this application be provided for.
2. The application is premised on sections 1A, 1B, and 63(b) and (e) of the *Civil Procedure Act* and order 42 rule 6(1) and (2) of the Civil Procedure Rules.
3. The application is based on the grounds set out on the face of the application and the supporting affidavit sworn by Sammy P. Langas on 28/10/2024.

Background

4. This court (F.M. Gikonyo J.) Delivered its judgment on 28/11/2023.
5. The respondents/applicants being dissatisfied with the said judgment filed an appeal to the court of appeal.
6. On Saturday 26/10/2024, the firm of Nasioki Auctioneers proclaimed the applicants' motor vehicles in the form of execution of the decree in this matter.
7. The applicants contend that execution of the decree will render their appeal to the court of appeal nugatory and they will suffer substantial loss.
8. The applicants contend that they shall suffer prejudice if the orders sought are not granted. The applicants argued that their families rely on the income from their transport business for their day-to-day lives and businesses were brought down by the execution of the court's decree.
9. The applicants contend that they shall abide by the terms and conditions that this court shall deem fit to impose.

Replying affidavit

10. The appellant/respondent opposed the application vide replying affidavit sworn by Benard Mbui on 18/11/2024.
11. The appellant/respondent contends that the applicants have not substantiated their claim of substantial loss if any exists, particularly that remitting the decretal sum will cause them irreparable loss. They argued that the applicants did not consider the appellant's business financial pitfalls as they masqueraded to poach passengers with forged and fake receipts.
12. The appellant/respondent contends that they are entitled to enjoy the fruits of the judgment delivered on 28/11/2023.
13. The appellant/respondent contends that it would be unreasonable to revert to the status quo ante given that the court ruled the applicants contemptuous for continuing to conduct their business unlawfully in the respondent's stage. In effect what the applicants pray for is to rehash an illegal state of affairs completely to the respondent's detriment.
14. The appellant/respondent urged this court to dismiss the stay application to facilitate an expeditious and final resolution of this long-running dispute.

Supplementary affidavit

15. The applicants filed a supplementary affidavit sworn on 06/01/2025 by Sammy P. Langas.
16. The applicants contend that on 03/12/2024 at Lexington Hotel in Narok, the appellant's representatives met with the applicants and made some deliberations on resolving the matter with



finality. There was a follow-up meeting on 06/12/2024 at SHIK PARK Hotel Nakuru where the minutes of the Narok meeting of 03/12/2024 were fully approved.

17. The appellants' representatives/officials wrote a letter to the governor-county government of Narok with reference to this appeal where they made it very clear that they desire not to pursue any execution proceedings against the respondents, they waived their claims and success in this appeal.

Further replying affidavit

18. The respondent filed an undated further replying affidavit sworn by Benard Mbui.
19. The respondent contends that the supplementary affidavit is for striking out since it was filed without leave of court.
20. The respondent contends that on 18/11/2024 they received a letter from Narok county government, department of Lands, housing, Physical Planning and Urban Development whose net effect had suspended the respondent's vehicles operations for the reason that the respondent's vehicles were causing obstruction and therefore causing a traffic jam at the main entrance of the bus park. A meeting was therefore called on 25/11/2024 to deliberate on the issue.
21. The respondent contends that the suspension had been instigated by the applicants as a result of a decree and auctioneering process in place. The respondent's leadership sought a meeting with the applicants in order to appease powers that be and the respondent's vehicles to resume operations at the Narok stage, the respondent wrote a letter to the governor county government of Narok that they had waived the decretal sum of Kshs. 12,732,000/=.
22. The respondent contends that there was no voluntariness of settlement as alleged in the supplementary affidavit as the settlement was full of coercion and blackmail into agreeing to the withdrawal of the case.

Directions of the court

23. By consent of the parties herein, the proclaimed assets shall not be seized until the application is heard and determined.
24. The appeal was canvassed by way of written submission.

The applicants' Submissions

25. The applicants submitted that the parties have agreed elsewhere to have this matter resolved amicably and executed minutes.
26. The applicants submitted that the court is not mandatorily tied into imposing security as a condition precedent to granting the stay of execution orders pending appeal. The applicants relied on the Supreme Court in petition 16(E023) of 2021 Between Westmont Holdings SDN BHD And Central Bank of Kenya, Kamlesh Mansukhlal Pattni & Uhuru Highway Development Limited.

The respondent's submissions.

27. The respondent submitted that the respondent's circumstances at the time of the purported agreement were characterized by bad faith, duress, and coercion. Therefore, the applicants' claim that the same be withdrawn and marked as settled is an illegality. Further, no consent has been filed. The respondent relied on *Euromec International Limited V Shandong Taikai Power Engineering Company Limited* (Civil Case E527 Of 2020) [2021] KEHC 93(KLR) (Commercial And Tax) (21 September 2021) (Ruling), and Section 80, and 72 of The *Civil Procedure Act*.



28. The respondent submitted that the applicants have no arguable appeal, have not proved substantial loss if the stay orders are not granted, and have not demonstrated that should their appeal fail they will promptly satisfy the decretal sum. The respondent does not dispute the application of the timeliness. The respondent relied on Order 42 Rule 6(2) of the Civil Procedure Rules 2010, *James Wangalwa & Another V Agnes Naliaka Cheseto* [2012] eKLR, and *Machira T/A Machira & Co. Advocates V East African Standard* [2002] eKLR.

Analysis And Determination.

After going through the record and the parties' submissions, I find the Issues are.

- i. Whether the matter should be marked as settled.
- ii. Whether orders of stay of execution should issue.

Whether the matter should be marked as settled.

29. The applicants claim that the parties amicably resolved the matter by themselves in the meetings held with the respondent's representatives on 03/12/2024 and 06/12/2024 thus seeking to have it marked as settled in terms of the said meetings' minutes.
30. The respondent contends that there was no voluntariness of settlement. That the negotiations between the applicants and the respondent were rooted in bad faith as the same initiated by the county government of Narok through a black mail, undue influence, coercion, and duress as occasioned by the latter dated 18/11/2024 suspending operation of the respondent's motor vehicles within Narok town.
31. Rule 29 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, (The Mutunga Rules) provides that the parties may, with leave of the court, record an amicable settlement reached by the parties in a partial or final determination of the case.
32. I have considered the arguments by the parties and perused the minutes. As seen, rule 29 of the Mutunga Rules allows parties, with leave of the court, to record an amicable settlement in a partial or final determination of their case. The operative words are "with leave of the court." This means that only the court can allow parties to record a consent taking into account that the rules deal with petitions presented to court under *the constitution* and, in particular, article 22 of *the constitution*. The court has to guard the rights and fundamental freedoms of the parties, ensuring not only that the consent is in tandem with *the Constitution* and the Bill of Rights, but also advances constitutional principles.
33. When consent is adopted, it becomes the judgment and order of the court and a decree or order is then issued bringing the matter to a conclusion.
34. the disputed minutes were not brought to court for adoption and to have the matter marked as settled.
35. I find therefore that there is no consent before the court for adoption and thus the matter is not marked as settled.

Whether orders of stay of execution should issue.

36. The court has discretionary power to order stay of execution of a decree pending appeal. In exercising the discretion to grant a stay pending appeal, the court takes a wider view of justice in determining whether there is a sufficient cause to order stay of execution; but also considering the traditional requirements in Order 46 Rule 2 of the Civil Procedure Rules, namely: -
- i. Whether the application has been made without unreasonable delay;



- ii. Whether substantial loss would occur upon the applicant unless stay of execution is granted; and
 - iii. The provision of security
37. The exercise seeks to attain a proportioned balance of the applicant's Result. *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR) successful appellant a mere pious explorer or a holder of barren judgment; avoiding prejudice to any party including rendering a right of appeal and the respondent's right to enjoy the fruits of their
38. Was the application filed without unreasonable delay? *Vishram Ravji Halai v Thornton & Turpin* Civil Application No. Nai 15 of 1990 [1990] KLR 365.
39. Judgment was delivered on 28/11/2023. The applicants filed a notice of appeal on 06/12/2023. Contempt of court proceedings commenced on 05/03/2024. Goods were proclaimed on 26/10/2024. The decree-holder obtained a warrant of attachment of movable property in the execution of a decree for money on 18/10/2024. The application herein was filed on 29/10/2024. This court finds that the application was filed without unreasonable delay.
40. The applicants submitted that they stand to suffer a substantial loss. On the other hand, the respondent submitted that the applicants have not demonstrated how they would suffer a substantial loss.
41. This court notes that the applicants have not shown a willingness to deposit the costs as security in court pending the hearing and determination of the appeal.
42. This court is not persuaded that the applicants will suffer substantial loss if stay is not granted as it may be reasonably compensated by way of damages.
43. In the upshot the application for stay lacks merit and thus makes the orders.
- i. The application is dismissed with costs.
 - ii. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
10TH DAY OF APRIL, 2025**

.....

CHARLES KARIUKI

JUDGE

