



Muki Co-operative Savings & Credit Ltd v Ndungu (Civil Appeal E005 of 2025) [2025] KEHC 4702 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL APPEAL E005 OF 2025
LN MUTENDE, J
APRIL 8, 2025**

BETWEEN

MUKI CO-OPERATIVE SAVINGS & CREDIT LTD APPLICANT

AND

MARTIN MWANGI NDUNGU RESPONDENT

RULING

1. The Applicant herein approached this court through a Notice of Motion dated 10th February, 2025 seeking inter alia stay of execution of judgment/ decree delivered on 22/02/2025 in Nyahururu CMCC No. E027 of 2020 between parties herein pending hearing and determination of the appeal. That the Respondent was awarded damages of Ksh.2,893,000/- plus costs and interest. That there being no stay of execution the Respondent may execute at any time.
2. That the Applicant being aggrieved with the judgment has exercised his inalienable right of the Appeal and has lodged an arguable and meritorious appeal which has high chances of succeeding. That if the stay of execution is not granted the appeal shall be rendered nugatory and the Applicants stand to suffer irreparable loss.
3. Despite being served the Respondent did not put in any response hence the application is unopposed.
4. At the hearing Mr. Mwangi, learned counsel for the Applicant asked the court to allow the application as prayed. Principles governing stay of execution are provided for in Order 42 Rule 6 of the [Civil Procedure Rules](#) that provides thus;
 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 subrule (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.
5. The power seized of the court in determining the issue is discretionary. It therefore behoves the Applicant to demonstrate existence of sufficient cause requiring grant of the order sought.
6. In *Butt v Rent Restriction Tribunal* [1982] KLR it was held that;
 - “ 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
 2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
 3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
 4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
 5. The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”
7. This is a case where the Respondent failed to contest arguments put forth by the Applicant through affidavit evidence. The court would have absolutely no reason to decline granting orders sought. For that reason, Orders granted in the primary suit are hence stayed pending hearing and determination of the Appeal.
8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF APRIL, 2025.

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L.N. MUTENDE
JUDGE

