



Renna & another v Kenya Power & Lighting Company Ltd (Civil Case 13 of 2020) [2025] KEHC 4431 (KLR) (4 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE 13 OF 2020**

**M THANDE, J
APRIL 4, 2025**

BETWEEN

IVANA RENNA 1ST PLAINTIFF

FRANCIS KADENGE KENGA 2ND PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LTD DEFENDANT

RULING

1. By an Application dated 30.8.24, the Defendant seeks in the main, stay of execution of the decree arising out of the judgment of this Court of 1.8.24 pending the hearing and determination of its intended appeal.
2. The Defendant states that it is dissatisfied with the judgment in question and has lodged a notice of appeal and has already applied for typed proceedings. It is the Defendant's contention that if stay is not granted, Defendant as a public entity will suffer substantial loss as the Plaintiffs will proceed to execute the judgment by way of attachment of its assets and properties used for delivery of essential services in the energy sector. Further, that if stay is not granted, its intended appeal will be rendered nugatory as the Plaintiffs will execute, thus exposing the Defendant to prejudice and substantial loss in the event its appeal which is arguable, succeeds. The Defendant stated that it was ready to offer security of due performance by way of bank guarantee and that the Plaintiffs stand to suffer no prejudice if the Application is allowed.
3. The Plaintiffs filed grounds of opposition dated 20.9.24. The grounds are that there are no steps taken by the Plaintiffs to execute the judgement that the Defendants seek to stay; that the Application is therefore premature and an abuse of the process of the court; that there is no evidence that the Plaintiffs are people of straw and therefore, unable to refund the sum paid in the unlikely event that the appeal is allowed; that there is no evidence that the Defendants will suffer substantial loss were execution to



proceed, as the Plaintiffs will merely be realising the fruits of a valid judgement; that it is not in the public interest to grant a stay of execution.

4. Parties filed their written submissions which I have duly considered together with the authorities cited.
5. The jurisdiction of the Court to grant stay of execution is set out in Order 42 Rule 6 of the [Civil Procedure Rules](#). Sub-rule 2 provides:
 - (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 order for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
6. A party seeking stay of execution must demonstrate that substantial loss may result to the party unless the order is made, that the application has been made without unreasonable delay, and finally that the party has given such security as the court orders for the due performance of the decree in question.
7. The general rule regarding an order for stay of execution is that first and foremost, it is discretionary. Where the Court is called upon, as in the present case, to exercise its discretion in any application, it must do so judicially, the overriding objective being to ensure that the ends of justice are met.
8. The Court of Appeal set out the factors to be considered in an application for stay of execution pending appeal in [Butt v Rent Restriction Tribunal](#) [1982] KLR 417, as follows:
 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 appellants 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.
9. Flowing from the cited decision, it can be discerned that while considering an application for stay, the discretion of the Court must be exercised in a manner that will not prevent an appeal or render an appeal nugatory. The Court will consider whether there is any overwhelming hinderance for the grant of stay and whether good grounds have been advanced. Additionally, the Court will take into account the existence of any special circumstances and unique requirements. Lastly the Court may order security for costs.
10. Access to justice is a right enshrined in Article 48 of [the Constitution](#) and extends to the right to appeal. As such, a party's right to appeal should be protected by ensuring that such party's appeal is not



rendered nugatory. In exercising its discretion, the Court must weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

11. In *Mohammed Salim t/a Choice Butchery v Nasserpuria Memon Jamat* [2013] eKLR, Kasango, J. while considering an application for stay of execution stated:

I begin by stating that the Court when it is called upon to grant stay it has to balance the interests of the Appellant with those of the Respondent. This was well stated in the case *M/s Portreitz Maternity v James Karanga Kabia* Civil Appeal No.63 OF 1997 where the Court had this to say-

“That right of appeal must be balanced against an equally weighty right, that of the Plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the Plaintiff of that right.”

12. On substantial loss, the Defendant submitted that the Plaintiffs have not demonstrated by affidavit, their ability to refund the decretal sum and that the burden shifted to them when this fear was expressed. The Plaintiffs countered this by submitting that there is no law requiring them to file such affidavit. The Defendant has alleged that the Plaintiffs are of no known means hence it should prove the assertion as he who alleges must prove. Further that the suit property is an example of the Plaintiffs’ known assets. The Plaintiffs thus contended that no substantial loss will be occasioned to the Defendant if the orders sought are not granted.
13. It is trite law that the purpose of stay of execution is to preserve the substratum of an appeal.
14. In the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, Gikonyo, J. had this to say on substantial loss.

The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein N. Chesoni* [2002] 1KLR 867, and also in the case of *Mukuma V Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:

“...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

15. Bearing in mind the balance that the Court must strike between the parties’ competing interests and considering that the Defendant is a public body that offers essential services in the energy sector, I am of the view that substantial loss would be occasioned to the Defendant were execution to proceed. It is therefore necessary that a conditional stay of execution is granted. I have also considered that in their grounds of opposition, the Plaintiffs stated that no steps had been taken by the Plaintiffs to execute the judgement. I am thus persuaded that there is sufficient basis to preserve the substratum of the appeal.
16. The law requires that an application for stay of execution be filed without unreasonable delay. The decision appealed against was made on 1.8.24 while the Application was filed on 30.8.24. I am satisfied that the Application was filed timeously.



17. In light of the foregoing, the Court has formed the opinion that there is no overwhelming hinderance to grant the stay sought herein. Accordingly, the Application succeeds and I allow the same on the following terms:

- i. Stay of execution of the judgment of 1.8.24 pending hearing and determination of the intended appeal is hereby granted on terms that the Defendant shall provide security by way of a bank guarantee for the decretal amount by 11.4.25. In default, the stay so granted shall lapse.
- ii. Mention on 13.5.25 for compliance.
- iii. Costs to abide outcome of appeal.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 4TH DAY OF APRIL 2025

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M. THANDE

JUDGE

