



SKL v WKL (Civil Case E002 of 2022) [2025] KEHC 4546 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL CASE E002 OF 2022
JR KARANJA, J
APRIL 8, 2025**

BETWEEN

SKL PLAINTIFF

AND

WKL DEFENDANT

RULING

1. The application vide the Notice of Motion dated 23rd July 2024 basically seeks an order of stay of execution of the judgment delivered herein on 10th July 2024 pending hearing and determination of an intended appeal by the Applicant/Defendant, WKL, who had been sued by the Respondent/ Plaintiff, SKL for division of their matrimonial property upon dissolution of their marriage.
2. The application was essentially brought under Order 42 Rule 6 of the Civil Procedure Rules and is based on the grounds stipulated in the Notice of Motion and which are fortified by the Applicants averments in the supporting affidavit dated 23rd July 2024 and the supplementary affidavit dated 3rd December 2024, which are countered by the Respondent in opposition vide her replying affidavit dated 8th October 2024.
3. The application was heard by way of written submissions which were filed herein by both parties through their respective legal counsels.

Clearly, from the pleadings and submissions the issue arising for determination is whether the application is competent and proper before this court and if so, whether the Applicant has satisfied the necessary requirements or conditions for an order of stay of execution pending appeal, hence deserving the exercise of this court’s discretion in his favour.
4. As regards the propriety and competence of the application it is presupposed that the application would be founded on the existence of an appeal by way of filing a memorandum of appeal. The Applicant being aggrieved by the impugned judgment ought to demonstrate that he has already preferred and filed the appeal. A notice of appeal does not constitute the filing or institution of an



appeal which ordinarily has to be within a period of thirty [30] days after delivery of a judgment and/or ruling.

5. An appeal is therefore said to be filed and/or instituted upon the filing of a memorandum of appeal setting out the grounds of appeal and the Appellant's prayers.

Order 42 Rule 1 of the Civil Procedure Rules provides that every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading and which shall set forth concisely and under distinct heads the grounds of the Objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

6. A notice of appeal would normally be filed within a specific time frame from the date of the judgment or ruling and ought to be accompanied with a memorandum of appeal or be followed by the memorandum of appeal within thirty [30] days of filing the notice.

It would therefore follow that the present application was filed prior to the filing of the memorandum of appeal. Indeed, no such memorandum has been filed herein therefore implying that there is no appeal for which an order of stay of execution of the impugned judgment may issue.

7. The record shows that there is in existence an application filed by the Applicant in the Court of Appeal at Eldoret vide the Notice of Motion dated 29th November 2024 seeking stay orders and leave for enlargement of the time for filing of the intended appeal. There is no indication as to whether or not the application was heard and determined. However, given the fact that the Applicant soldiered on with the present application before this court it would appear that the application before the Court of Appeal is yet to be heard and determined.

8. For all the reasons foregoing it is evidently clear that the appeal for which an order of stay of execution is herein sought is non-existent meaning that there is nothing to stay. The present application is therefore incompetent and improper before this court and ought to be dismissed on that ground only. And, even if the application was proper and competent the Applicant did not demonstrate that he stood to suffer substantial loss in the absence of a stay order or that he provided or that he was in a position to provide such security as the court may order for the due performance of such decree or order as may ultimately be binding on him. It is also clear that the intended appeal is already belated unless of course the applicant is granted leave to file it out of time.

9. In sum, the present application is lacking on merit in all facets and is hereby dismissed with costs to the Respondent.

DELIVERED AND DATED THIS 8TH DAY OF APRIL 2025

HON. J. R. KARANJAH,

JUDGE

