



**Gichu & another v Sinkeet & another (Commercial Appeal E297 of 2024)
[2025] KEHC 6364 (KLR) (Commercial and Tax) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E297 OF 2024
JWW MONG'ARE, J
MAY 20, 2025**

BETWEEN

DICKSON MUCHIRI GICHU 1ST APPELLANT

SOLARWORKS EAST AFRICA KENYA LIMITED 2ND APPELLANT

AND

JULIUS PARSAOTI SINKEET 1ST RESPONDENT

WILSON OLOISHORUA SILAU 2ND RESPONDENT

RULING

Introduction and Background

1. The Respondents filed a suit against the Appellants in the subordinate court for breach of contract as the former claimed that the latter borrowed a sum of Kshs.7,086,000.00/= from them. The Respondents claim that the Appellants were served with the court summons and the suit and since there was no response, a request for interlocutory judgment was made and this was granted on 10th September 2024 and a decree was issued on 16th September 2024. The Respondents begun the process of execution which prompted the Appellants to file the application dated 8th October 2024 seeking to forestall the execution and set aside the interlocutory judgment issued by the subordinate court pending their appeal before the court. This application is supported by grounds on its face and the supporting affidavit of the 1st Appellant sworn on 8th October 2024.
2. The Respondents have responded to this application by filing the application dated 14th October 2024 and affidavit sworn on the same date by their Advocate, ELIUD MARIANYI SENTEU and the affidavits of the 2nd Respondent sworn on 6th November 2024. The Respondents' application seeks to set aside the ex parte orders issued by the court on 10th October 2024 and stay the suit pending hearing



and determination of HCCA E1131 of 2024 and HCCOMMA E292 of 2024. The two applications were canvassed by way of written submissions which are on record and which I have considered and I will make relevant references to them in my analysis and determination below.

Analysis and Determination

3. The principles that guide the court in an application for stay of execution pending an appeal are grounded in Order 42 Rule 6 (2) of the Rules. In order to succeed, the applicant must demonstrate substantial loss may result unless the order of stay is made. It must also demonstrate that the application has been brought without undue delay and lastly, the Applicant must give such security as the court may order for the due performance of the decree or order as the case may be. These principles have been buttressed by decisions of superior courts where it was added that the power to order stay of execution is discretionary and must be exercised in such a way that the appeal is not rendered nugatory and that this discretion is based on the facts and circumstances of each case (see *Halai & Another v. Thornton & Turpin* [1990] KECA 65 (KLR) and *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR)).
4. Whereas the Appellants submit that they have satisfied the aforementioned conditions for an order of stay of execution pending appeal to be granted, I note that they have not commented on the requirement for security. The Appellants have cited the case of *Francis Ngige Nyoike v Mathew Ngige Macharia & 2 others* [2005] KEHC 2044 (KLR) where the court held that an applicant should be willing and able to give such security as is ordered by the Court for the due performance of the decree. In any case, I note that the Appellants have stated that they are ready and willing to abide by the terms or any other conditions as shall be directed by the court pending the hearing and determination of the substantive appeal. As furnishing of security is mandatory unless the Appellants demonstrate that they are unable to provide the same, which they have not done, I am inclined to grant the order of stay of execution on condition that the Appellants deposit half the decretal amount in court, that is Kshs.4,577,361.86/=.
5. Turning to the Respondents' application, I note that the Appellants have annexed Notices withdrawing the other suits therefore, I find that no prejudice will be occasioned upon the Respondents if this appeal proceeds. On setting aside of the court's ex parte orders, I find that the same shall lapse if the Appellants do not comply with the court's directions and orders as set out below.

Conclusion and Disposition

6. In the upshot, I allow the application and grant the following are the dispositive orders of the court:
 1. A stay of execution of the decree from the subordinate court in MCCC No. E525 of 2024 be and is hereby granted on condition that the Appellants deposit a sum of Kshs.4,577,361.86/= in court within 60 days and that the same shall be held by the court for the whole duration of the appeal.
 2. The Record of Appeal should be filed and served within 60 days of this ruling.
 3. If the aforementioned conditions are not met within 60 days from the date of this ruling and in default, the Respondents will be at liberty to execute and the stay orders that are in place will be vacated.
 4. The costs of the applications will abide the outcome of appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF MAY 2025

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J.W.W. MONG'ARE

JUDGE-

In the Presence of:

1. Mr. Odhiambo for the Appellant/Applicant.
2. Mr. Kimani holding brief for Mr. Senteu for the Respondent.
3. Amos - Court Assistant

