



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mogo Auto Limited v Mantu (Civil Appeal E306 of 2024)
[2025] KEHC 6213 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E306 OF 2024
HM NYAGA, J
MAY 15, 2025**

BETWEEN

MOGO AUTO LIMITED APPLICANT

AND

PAMELA KAJUJU MANTU RESPONDENT

RULING

1. Buy n application dated 21/11/2024, the Appellant/Applicant has sought the following orders:-
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the intended appeal, this court be pleased to order a stay of execution of the Judgment dated 24th October, 2024, together with any subsequent decree.
 - d. That the costs of the application be provided for.
2. The application is proposed by the grounds set out on its face and so supported by the affidavit of Erick Omondi Onditi, he applicant's legal officer, sworn on even date.
3. It is the applicant's case that the trial court delivered a Judgment in favour of the Respondent on 24th October, 2024. That aggrieve by the said decision, the applicant has referred the appeal herein. That the is imminent threat to commence execution and (or) disposal of the motor vehicle in question to the detriment of the applicant.
4. That this application has been brought timeously and at utmost good faith. That unless stay is granted, the operation of the applicant may end up incurring losses.



5. In response, the respondent filed a replying affidavit sworn on 4th February, 2025. The respondent avers that Judgment was entered in her favour by the trial court.
6. That the application is meant to frustrate her from enjoying the fruits of her Judgment. That no offer of security has been made by the applicant as required by the law. That the appeal has low chances of success.
7. Parties filed their respective submissions.
8. For the applicants, it is submitted that it has come under Order 42 Rule 6(2) of the Civil Procedure Rules.
9. That it shall suffer substantial loss if the stay id not granted, on what such substantial loss is, the applicant cited the case of Dickson Isabura Angaluki and 2 others Vs- Ukwala Supermarket Limited & 2 Others (2013) eKLR.
10. It is further submitted that the appeal, raises solid grounds in that the court awarded the respondents more than what was sought in her statement of claim. Thus, the appeal is arguable and will be rendered nugatory. To buttress this point, the applicant cited the case of Stanley Kangethe Kinyanjui Vs- Tonny Kettel & 5 Others and Reliance Bank limited – Vs- Norlake Investment Limited (2002) EA 227.
11. It is further submitted that the application has been brought without delay.
12. On security, it is submitted that the applicant is willing to deposit such as the court deems fit, on this issue, the applicant this issue the applicant cited the case of Arun Shauma T/A Roikundoil & Co. Advocates Nairobi. Civil Misc. Application No. 802 of 2010.
13. For the respondent, it is submitted that the application is inept as the applicant has not show any damage or loss it is likely to suffer. As to what amounts to substantial loss the respondent cited the case of Century Oil Trading Company Limited Nairobi Milimani Civil Application No. 1561 of 2007.
14. It is submitted that any loss to be suffered, is not substantial, but ordinary loss which every Judgment debtor is exposed to as a natural consequence of a judgment. To buttress this position, counsel cited the case of Machira T/s Machira & Company Advocates – vs- East African Standard No. 2 (2002) KLR 63.
15. It is further submitted that the applicant has nor made any offer of security as required. In consideration, it is submitted that the application fails to meet the threshold set out under order 42 Rules E (2) of the civil Procedure Rules.
16. As correctly submitted by the parties, being an application for stay of execution pending appeal the applicant has to bring itself within the parameters set out under Order 42 rule (6) (2) which provides as follows:-
17. On substantial loss, the applicant states that if the execution proceeds, then its operation swill be affected. That eh appeal will be rendered nugatory. As to what amounts to substantial loss, the court in
18. Evidently, the decree of the lower court is liable for execution. In my view, the respondent has not shown that she is capable of refunding the decretal sum if the appeal is successful. That is a consideration for substantial loss and I accept it.
19. It is also that if the applicant is successful on appeal, the same may be rendered nugatory, as it may be unable to recover the amount from the respondent.
20. On the question of delay there is no doubt that the application was filed without delay.



21. As for security, the applicant has deponed that it is ready and willing to abide by any orders of the court. That in my view is sufficient.
22. Having considered the matter, I make the following orders:-
 - a. There shall be a stay of execution of the lower court pending hearing and determination of the appeal herein, on condition that the applicant deposits the decretal sum of Ksh. 367,100/= in a joint interest earning account in the name of the advocates within the next 45 days.
 - b. The respondent to comply with any request to provide all documents, required to open the said account.
 - c. In default of (a) above, these stay orders, shall lapse automatically.
 - d. Costs of the application shall abide by the outcome of the appeal.
 - e. Directions on the appeal will be given shortly after delivery of this ruling.

DATED, SIGNED & DELIVERED AT MERU THIS 15TH DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

