



**Njuma t/a Benecia International Limited v Granary Capital Limited (Miscellaneous Case E607 of 2021) [2025] KEHC 6857 (KLR) (Commercial and Tax) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6857 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX**

**MISCELLANEOUS CASE E607 OF 2021**

**F GIKONYO, J**

**MAY 15, 2025**

**BETWEEN**

**LEAH WANJIRU NJUMA T/A BENECIA INTERNATIONAL  
LIMITED ..... APPLICANT**

**AND**

**GRANARY CAPITAL LIMITED ..... RESPONDENT**

**RULING**

1. Before the court is the notice of motion dated 21<sup>st</sup> February 2024, by the respondent/ applicant, seeking the following orders: -
  1. That this Honourable court be pleased to discharge the orders of execution pending appeal issued on the on the 14<sup>th</sup> of December 2022.
  2. That this Honourable Court be pleased to grant any further Orders Directions that it may deem fit under circumstances of the case and in the interest of justice.
  3. That costs of this application be in the cause.
2. The application is made under Sections 1A of the *Civil Procedure Act* and Orders 42 rule 6(1) (2) and 51 rule 1 of the Civil Procedure Rules. It is premised on the grounds on the application and the supporting affidavit sworn by Mercy Mwinzi, Advocate.
3. The application is unopposed as the respondent filed no response despite service of the application and the hearing notice.



## Grounds

4. The grounds are that on the 14<sup>th</sup> December 2022, Hon. Justice Mabeya granted the respondent, Leah Wanjiru Njuma, orders of stay pending appeal. That the Judge further admitted the said respondents' alternative security subject to verification at her costs, and directed that she files and serves her record of appeal within 21 days from the date of the said order. That 21 days lapsed yet the applicant has not complied with the orders more than a year later, beginning of February 2023. The respondent continues to enjoy the protection of this court without complying with the directions it gave in so far as the filing and service of the Record of Appeal is concerned.

## Analysis and Determination

5. I have considered the application. The respondent initiated this matter through a chamber summons application by the respondent seeking enlargement of time to file a notice of appeal out of time.
6. On 14<sup>th</sup> December 2022, Justice Mabeya made the following orders: -

“I have considered the Counsels’ representations. Let the security be verified at the cost of the applicant. Once it is verified, the Original Title be deposited in Court.

In the meantime, the ROA be filed within 21 days and stay granted until further orders.”
7. According to the applicant, stay was conditional. A reading of the above orders does not reveal that the stay granted was conditional. Neither was the order of stay given by the court (Mabeya J) self-executing order as to render automatic lapse of the stay order upon the respondent’s default to file a record of appeal within 21 days from the date of the order.
8. Nevertheless, the appellant is under statutory obligation to assist the court to achieve the overriding objective of the law, especially, expeditious disposal of the case. where the appellant neglects this duty, the appeal may be dismissed for want of prosecution. Therefore, a court of justice may set aside or review its orders for such sufficient cause.
9. The appellant has not filed the record of appeal, yet, she is enjoying stay of execution. A formal application has now been made to vacate the orders of stay of execution.
10. Under Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules, the court may review its decision or order where there is: discovery of new and important matter, some mistake or error on the face of the record or any other sufficient reason.
11. The apt ground for review in this case is ‘any other sufficient reason’. The Court of Appeal has held that, to advance the course of justice, the courts have the unfettered discretion to review its orders for any sufficient reason. *Shanzu Investments Ltd v Commissioner of Lands [1993] eKLR*
12. It is evident that the order for stay pending appeal was intended to allow the respondent to file a record of appeal and prosecute her appeal. The court granted the respondent 21 days to file the record. However, from the information provided by the applicant, the respondent has not complied to date. Much time has gone by justifying the question whether it is fair and just to allow a recalcitrant suitor to continue enjoying protection of the law.



13. In addressing this question, the statement by Kuloba J in *Machira t/a Machira & Co Advocates v East African Standard* [2002] eKLR, is apt that: -

“To be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion.

The ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage. That is trite knowledge. This is one of the fundamental procedural values which is acknowledged and normally must be put in effect by the way we handle applications for stay of further proceedings or execution, pending appeal.

...

So, in justice and fairness, when a party has been found by a court to be in the right at whatever stage in the litigation, he should ordinarily have access to the consequences of that judicial finding and decision and enjoy his rights as so found and determined. Any subsequent decision of the court which tends to impede the normal flow of justice, by suspending the enjoyment of the consequential benefits of one's success can only be rendered in exceptional circumstances after an exercise of great caution and finding that suspension is necessary in justice and fairness.”

14. Accordingly, I am satisfied that the applicant has demonstrated sufficient reason for the setting aside of the orders of 14<sup>th</sup> December 2022. The order of stay of execution pending appeal is hereby set aside.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 15<sup>TH</sup> DAY OF MAY, 2025**

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**F. GIKONYO M**  
**JUDGE**

In the presence of: -

Ms. Mwinzi for Applicant

No appearance for Respondent

CA - Kinyua

