



**Rentco East Africa Limited v Kimeto (Civil Appeal
E021 of 2025) [2025] KEHC 5885 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5885 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E021 OF 2025**

JK SERGON, J

MAY 8, 2025

BETWEEN

RENTCO EAST AFRICA LIMITED APPELLANT

AND

ANTHONY CHERUIYOT KIMETO RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 27th March, 2025 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That there be an order for stay of execution of the execution Judgement and decree issued on the 5th February,2025 by the Honourable F.M. Nyakundi PM in the Chief Magistrate Court at Kericho Civil Suit No. E271 of 2023 Antony Cheruiyot Kimeto v Rentoworks East Africa Limited pending the hearing and determination of the appeal and/or until further orders of the court
 - (iv) That the costs of this application be in the appeal cause.
2. The application is based on grounds on the face of it and the supporting affidavit of William Kipkorir Arusei the Applicant/Appellant.
3. He avers that he is an Advocate of the High Court of Kenya practicing as such in the firm of Arusei & Co. Advocates who have the conduct of the suit on behalf of the Appellant/Applicant and duly authorized and hence competent to swear this affidavit.



4. He avers that on the 5th February, 2025, the Honourable F.M Nyakundi PM delivered a Judgement against the Appellant/Applicant and awarded the Respondent Kshs. 3,668,544/- plus costs and interests.
5. He avers that the applicant is dissatisfied with the Judgement of Liability and Quantum delivered on the 5th February, 2025 and had filed an Appeal and attached a copy of the Memorandum of Appeal.
6. He avers that the respondent has commenced execution of the decree by calling in the Auctioneers who moved and proclaimed the applicants movable properties on the 25th March, 2025 giving them seven (7) days.
7. He avers that the appellant/applicant is staring at and will suffer substantial loss if the respondent executes the judgement and that execution would render the appeal herein a nugatory and an academic exercise.
8. He avers that the Appeal has high chances of success and raises arguable grounds of Appeal in the Memorandum of Appeal dated the 4th March, 2025 and the main grounds of the appeal are that:- (a) The awards in the Judgement on various Limbs were too high and/or inordinately high as to constitute a wholly erroneous estimate of the damages. (b) Secondly that the various Limbs of treatment expenses and future medical expenses were not pleaded and proved at the hearing. (c) Thirdly that on the whole the Judgement on Liability at 100% against the appellant was perverse and unsupported.
9. He avers that if the execution proceeds, the appellant/applicant will have no means of recovering back the decretal amount in the event that the appeal succeeds and that the respondent has no known assets and/or the means of refunding back the decretal amount in the event that the Appeal succeeds.
10. He avers that in the meantime there is a paramount need for a stay of execution of the Judgement and decree herein so that the substance and substratum of the Appeal is protected and preserved until the Appeal is heard and determined.
11. He avers that this application has been brought without undue delay and it is in the interests of justice to grant the same.
12. He avers that the applicant is willing to provide such security as the court orders for the due performance of such decree or order as may ultimately be binding upon the applicant.
13. Anthony Cheruiyot Kimeto the respondent filed a replying affidavit in response to the application.
14. He avers that judgment in this matter was delivered on 5th February, 2025 and the defendant/applicant granted a 30 days stay of execution.
15. He avers that on 5th March, 2025 the Applicant/Appellant filed a Memorandum of Appeal against the judgment of the lower court on both liability and quantum.
16. He avers that the Appellant/Applicant failed to file an application for stay of execution pending appeal as is required by law hence necessitating the proclamation.
17. He avers that it is after the said proclamation that the Applicant/Appellant approached this court with the said application for stay of execution pending appeal.
18. He avers that the said proclamation was done on 25th March, 2025 and the application for stay of execution pending appeal was filed on 27th March, 2025 which is clear evidence that this application is an afterthought on the part of the Appellant/Applicant



19. He avers that had the proclamation of attachment/repossession/distrainment of movable property not happened, the Applicant would still not have filed an application for stay pending appeal before this honourable court.
20. He avers that it is clear that the proclamation of attachment/ repossession/distrainment of movable property is what woke the Applicant from its slumber and it is not the duty of this honourable court to aid the Applicant in its indolence.
21. He avers that the Applicant has not fulfilled all the three ambits required for an application for stay of execution pending appeal to be granted. The Applicant has not given any explanation to stay of execution pending appeal. There was undue delay in filing the same and the same was only done after proclamation.
22. He avers that the delay occasioned by the Plaintiff offends the overriding objectives of this Honourable court in facilitating the just, expeditious and efficient disposal of cases.
23. He avers that an appeal does not act as an automatic stay of execution and since ignorance of the law is no defence, this application should be disallowed for being vexatious and an abuse of this court process.
24. He avers that the replying affidavit was filed in opposition of the instant application and he therefore urged the court to strike out the same with costs.
25. The matter came up for inter partes hearing, the learned counsel for applicant reiterated that she would rely on the grounds in the application and the averments in the supporting affidavit and the learned counsel reiterated that he would be relying on the averments in the replying affidavit.
26. Having considered the pleadings by the parties this court finds that the issue (s) for determination are whether to grant stay execution against the judgment and decree in Kericho Civil Suit No. E271 of 2023 pending the hearing and determination of the appeal.
27. On the issue as to whether to grant a stay of execution, the judgment was delivered on 5th February, 2025 while the present application was filed on 27th March, 2025, slightly over three weeks after the lapse of the 30 days stay of execution granted by the trial court. An application for stay invokes the discretionary powers of this court under Order 42 Rule 6 (1) of the Civil Procedure Rules, 2010 that empowers the court to stay execution, either of its judgement or that of a court whose decision is being appealed from, pending appeal. The conditions to be met before stay is granted are provided for under Order 42, Rule 6 (2) which states as follows: “No order for stay of execution shall be made under sub rule (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 orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.” This court notes that the instant application was not filed timeously, this notwithstanding, the Applicants contended that respondent had commenced execution of the decree by calling in the Auctioneers who moved and proclaimed the applicants movable properties. The applicants contended that they would suffer substantial loss if the respondent executes the judgement and that the execution would render the appeal herein a nugatory and an academic exercise. The applicants further contended that if the execution proceeds, the applicant will have no means of recovering back the decretal amount in the event that the appeal succeeds and that the respondent has no known assets and/or the means of refunding back the decretal amount in the event that the appeal succeeds. The applicants were further adamant that it was imperative that stay of execution of the judgement and decree be granted so as to preserve the substance and substratum of the appeal, pending the hearing and determination of the appeal. The applicants stated that they were willing to provide such security as the court orders for the due performance of such decree or order. The



respondent contended that whereas the applicants filed an appeal against the judgment of the lower court on both liability and quantum, they did not file an application for stay of execution pending appeal as is required by law hence necessitating the proclamation. The respondent contended that an appeal does not act as an automatic stay of execution. The respondent contended that the applicant has not fulfilled all the three ambits required for an application for stay of execution pending appeal to be granted. The respondent faulted the applicant for failing to offer a plausible explanation for the delay in filing the stay of execution pending appeal and that the same was only done after proclamation.

28. It is trite law that the equitable relief of stay pending appeal is discretionary in nature. However, needless to say that discretion must be exercised judiciously. In *Absalom Dora vs Tarbo Transporters* [2013] eKLR the Court held that: “The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court: as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination.” In determining the present application before me, this court is under a duty to balance the interests of the parties taking into account the fact that an appellant has an undoubted right of appeal whereas the respondent has a decree which he should not be obstructed from executing unless there is a good reason. Having considered the averments by the parties on the issue of stay and the circumstances of this case, it is the finding of this court that the applicants are entitled to a conditional stay of execution as they ventilate the appeal.
29. The notice of motion dated 27th March, 2025 partially succeeds giving rise to issuance of the following Orders:-
- (i) There be a stay of execution of the judgment/decreet in Kericho Civil Suit No. E271 of 2023 pending the hearing and determination of the appeal.
 - (ii) The applicant to deposit half the decretal sum of Kshs 1,834,272/= in an interest earning account in the names of both advocates appearing in this matter within thirty (30) days hereof. In default the order of stay shall automatically lapse.
 - (iii) Costs to abide in the outcome of the appeal.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF MAY, 2025.

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J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Maritim holding brief for Arusei for the Applicant

Miss Mutiira for the Respondent

