



REPUBLIC OF KENYA



Sigei v Chepkwony (Civil Appeal E031 of 2025) [2025] KEHC 5770 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E031 OF 2025**

JK SERGON, J

MAY 8, 2025

BETWEEN

SAMMY SIGEI APPELLANT

AND

JOYCE CHEPKWONY RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 2nd April, 2025 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That upon hearing and determination of this Application, this Honourable Court be pleased to issue an order of stay of execution of the Judgment in small claims court commercial E369 of 2024 delivered on the 5/03/2025 pending the hearing and determination of the Appeal.
 - (iv) That the costs of this application be provided for in the appeal.
2. The application is based on grounds on the face of it and the supporting affidavit of Simmy Sigei, the Applicant/Appellant.
3. He avers that on 5th March 2025, the small claims court at Kericho entered a judgment against him in SCCCOMM E369 OF 2024 ordering him to pay Kshs. 224,000/- plus interests and costs and attached a copy of the judgment.
4. He avers that being aggrieved with the said judgment he intends to file an Appeal before this honorable court raising substantial questions of the law and attached a copy of the filed memorandum of appeal and that he has requested for the typed proceedings from the Small Claims Court Registry for purposes of the Appeal.



5. He avers that the intended appeal has a high likelihood of success and unless a stay is granted the appeal shall be rendered nugatory and further that after the 30 days stay granted on the 5th of March 2025 lapses, the Respondent shall embark on execution of the Judgment/Decree.
6. He avers that unless this Honourable Court issues an order of stay of execution urgently, he will suffer irreparable and substantial harm.
7. He avers that the Affidavit in support of the Notice of Motion Application for grant of Stay orders pending the hearing and determination of the Appeal.
8. He avers that the granting of the orders sought will not occasion any prejudice to the Respondent.
9. The matter came up for inter partes hearing, the learned counsel for the stated applicant stated that they served the application upon the respondent, however, there was no response on the part of the respondent. There was no representation on the part of the respondent.
10. 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 small claims court commercial E369 of 2024 pending the hearing and determination of the intended appeal.
11. On the issue as to whether to grant a stay of execution, the judgment was delivered on 5th March, 2025 while the present application was filed on 2nd April, 2025, before 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 filed timeously. This court also notes that there was no response on the part of the respondent, this notwithstanding, the applicant contended that they would suffer irreparable and substantial loss and damages if orders sought herein are not granted and further that the intended appeal will be rendered nugatory. The applicant further contended that stay of execution orders sought will not occasion any prejudice to the respondent. The applicant did not offer security for due performance of the decree, however, this court is enjoined to balance the interests of the parties to this suit. In FOCIN MOTORCYCLE CO. LIMITED v. ANN WAMBUI WANGUI & ANOR [2018] eKLR, it was stated that: “Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.” Having considered the application and the averments in the supporting affidavit by the applicant on the issue of stay and the circumstances of this case, it is the finding of this court that the applicant is entitled to a stay of execution as he ventilates his intended appeal.
12. I find that the applicants are entitled to pursue the appeal. I hereby partially allow the notice of motion dated 2nd April, 2025 in the following terms:-
 - (i) There be a stay of execution of the judgment/decree in Kericho small claims court commercial E369 of 2024 pending the hearing and determination of the intended appeal.



- (ii) The applicant to deposit the decretal sum of Kshs 224,000/- 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

Onkundi holding brief for Owuor for the Applicant

No Appearance for the Respondent

