



**Wanjugu & another v Gachathi (Civil Appeal E1459 of 2024)  
[2025] KEHC 6056 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6056 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E1459 OF 2024**

**AC MRIMA, J**

**MAY 15, 2025**

**BETWEEN**

**CONSOLATA WANJUGU ..... 1<sup>ST</sup> APPELLANT**

**SAMSON KIRIUNGI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PHOEBE MUTHONI GACHATHI ..... RESPONDENT**

**RULING**

1. The Applicants/Appellants have moved this Court through an application by way of a Notice of Motion dated 6<sup>th</sup> day of December 2024 seeking inter alia an order staying the execution of the judgment rendered on 14<sup>th</sup> November 2024 in Nairobi [Milimani] Small Claims Court in SCCCOMM No. E4817 of 2023 [hereinafter referred to as ‘the suit’] pending the determination of the appeal.
2. The application was supported by the grounds on the face thereof and the Affidavit in support as well as written submissions.
3. The gist of the application is that the Applicants were dissatisfied with the impugned judgment where it was decreed that they jointly and severally pay the Respondent Kshs. 500,000/= and do return of a Share Certificate under a contract dated 10<sup>th</sup> November 2016. The Applicants contended that despite denying the contract and producing forensic evidence confirming forgery, such evidence was disregarded by the trial Court, hence, the need to subject the impugned decision for consideration by this Court.
4. In opposing the application, the Respondent filed a Replying Affidavit sworn on 27<sup>th</sup> January 2025. She alluded that the application was misconceived, lacking merit and an abuse of the Court’s process and, further that it failed to satisfy the conditions for the grant of a stay of execution under Order 42 Rule 6 of the Civil Procedure Rules, 2010. She further argued that any delay in satisfaction of the decree



would deprive her the fruits of the judgment. The Respondent filed written submissions in further support to the opposition.

5. Order 42 Rule 6 of the Civil Procedure Rules, 2010 governs the granting of stay of execution pending appeal to the High Court. Such a relief is at the discretion of the Court based on the following settled principles: -
  - a. Substantial loss may result to the applicant unless the order is made;
  - b) The application has been made without unreasonable delay, and;
  - c. The applicant has given such security as the court orders for the due performance of the decree or order as may ultimately be binding on them.
6. On the aspect of substantial loss, the Courts in *Silverstein vs. Chesoni* [2002] 1KLR 867 as well as in *Mukuma vs. Abuoga* emphasized the centrality of substantial loss as what has to be prevented by preserving the status quo otherwise the loss would render the appeal nugatory. In this case, the issues raised for consideration on appeal are germane. They are serious issues of law including the validity of a contract and fraud. If execution is to be allowed, no doubt will the Applicants will be exposed to a possibility of non-recovery of the judgment sum in the event the appeal is successful since the financial ability of the Respondent is unknown. Further, the Respondent may deal with the Share Certificate at will. Such is evidence of possible substantial loss.
7. On whether there was undue delay in making the instant application, this Court finds in the negative. The application was filed on the 6<sup>th</sup> day of December 2024 and the disputed judgment delivered on the 14<sup>th</sup> day of November 2024. That was well within the time frame provided for filing appeals.
8. As to the security, since there is a monetary decree, it is desirable that a deposit is made into Court. In the unique circumstances of this case, the sum of Kshs. 200,000/= [Two Hundred Thousand Only] will suffice.
9. In the end, the following orders do hereby issue: -
  - (a) There be a stay of execution of the decree in Nairobi [Milimani] Small Claims Court in SCCCOMM No. E4817 of 2023 pending the determination of the appeal on condition that the Applicants deposit the sum of Kshs. 200,000/= in Court within 21 days of this ruling in default execution to issue.
  - (b) The Lower Court file be availed for further directions on a date to issue.Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Miss. Kamau, Learned Counsel for the Applicants.

Miss. Wambui, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

