



REPUBLIC OF KENYA



**Bulle v Kipsabul (Civil Appeal E110 of 2025) [2025] KEHC 8627 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8627 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL E110 OF 2025  
RN NYAKUNDI, J  
JUNE 19, 2025**

**BETWEEN**

**IBRAHIM BULLE ..... APPLICANT**

**AND**

**HOSEA KIMUTAI KIPSABUL ..... RESPONDENT**

**RULING**

1. What is pending before this Court is the Applicants' Notice of Motion dated 3<sup>rd</sup> June 2025 seeking the following orders;
  1. Spent
  2. Spent
  3. Spent
  4. There be a stay of proceedings and all consequential orders in Eldoret Civil Suit No. E340 of 2024 pending hearing and determination of Appeal.
  5. Costs of this application be in the cause.
2. The Application is expressed to be brought under Order 42 Rule 6 (1), Order 43 (1) (u) and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010; Sections 1A, IB and 3A of the *Civil Procedure Act*, Chapter 21 Laws of Kenya and all other enabling provisions of the Law.
3. The Application is premised on the grounds on the face of it and the averments of the Applicant in the affidavit in support of the Application. In his affidavit, he deponed that judgement was entered against him in Eldoret CMCC E340 of 2024 and an award of Kshs. 15,000,000/- entered against him. His advocates then filed an Application on 2<sup>nd</sup> April 2025 seeking the setting aside of the interlocutory judgement which was granted vide an order of the court dated 27<sup>th</sup> May 2025. The same was conditional to the Applicant depositing the decretal sum in a joint interest earning application



in the names of the parties' law firms within 30 days. He is aggrieved by these conditions and seeks to appeal against the same. he is aggrieved by the setting aside of the judgement on condition that he deposit a decretal amount that is subject of a judgment that has been set aside. Further, that the same should have been set aside without conditions.

4. The Applicant filed a further affidavit dated 4<sup>th</sup> June 2022 in support of the Application. In the affidavit, he attached copies of the application in the trial court and the ruling arising from the same.
5. The Respondent did not file a replying affidavit but opted to file submissions on the application. In the submissions dated 13<sup>th</sup> June 2025, through the firm of Messrs Bundotich Korir & Company Advocates, counsel for the Respondent gave a brief history of the matter and laid out the principles governing stay of execution. He submitted that there is no clause in the application where the Appellant alludes to any loss that he would suffer were he to deposit the amount ordered in a joint account. He stated that the Appellant would be in a position to recover the deposited amount were the suit to be dismissed and or appeal succeed.
6. He submitted that the trial court exercised its discretion in granting the orders appealed against and cited the case of *Rayat Trading Co. Limited v Bank of Baroda & Tetezi House Ltd* [2018] eKLR in support of this submission. He additionally cited the case of *Equity Bank Limited v West Link MBO Link Ltd* in this regard. He urged that the decision to set aside judgement is discretionary and the discretion to also impose conditions and terms are discretionary as such, the learned magistrate properly exercised his discretion. He cited the case of *Ngui Katuvi & another v John Wakiri Kire* (Civil Appeal E187 of 2022) [2023] KEHC 25363 (KLR) (Civ) (17 November 2023) (Judgment) in this regard. He prayed the court dismiss the application aor in alternative, issue conditional stay against the appellant which could include availing a bank guarantee.

### **Analysis & Determination**

7. The issue that arises for determination in this application is; Whether there should be a stay of proceedings and all consequential orders in Eldoret Civil Suit E340 pending the determination of the Appeal.
8. The Applicant seeks a stay of proceedings in the trial court as he seeks to appeal an interlocutory decision rendered by said court. The impugned decision relates to the application by the Applicant herein, where he sought, vide an Application dated 2<sup>nd</sup> April 2025, to have the interlocutory judgement that was entered on 12<sup>th</sup> February 2025 set aside.
9. Stay of proceedings is loosely governed by Order 42 Rule 6 of the *Civil Procedure Rules* which provides as follows;
  - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  - (2) 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.
- (3) Notwithstanding anything contained in sub rule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
10. It is not lost on this court that the Applicant seeks stay of proceedings and not stay of execution. However, by the nature of the ruling of the trial court, the outcome of the proceedings, if not stayed at this juncture, will eventually result in execution.
11. This Court stated, in *Lucy Njoki Waitbaka v Tribunal Appointed to Investigate the Conduct of the Honourable Lady Justice Lucy Njoki Waitbaka & Judicial Service Commission; Kenya Magistrates & Judges Association (Interested Party)* [2020] eKLR that:
- “We note that stay of proceedings is a serious, grave and fundamental judicial action which interferes with the right of any party to conduct litigation. (See: *Francis N. Githiari v Njama Limited* [2006] eKLR). It impinges on the right of access to justice, right to be heard without delay and the right to a fair trial. While addressing the issue of stay of proceedings in the persuasive case of *Global Tours & Travels Limited (supra)*, Ringera, J as he then was stated thus:
- “As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal in the sense of whether or not the intended appeal will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”
12. In *William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others* [2019] eKLR, a 5-judge Bench of the High Court, after looking at our jurisprudential scan on the question of stay of proceedings, authoritatively laid out the principles our Courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court. See: *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986]



eKLR; *Global Tours & Travels Limited* (Nairobi HC Winding Up Cause No. 43 of 2000); *David Morton Silverstein v Atsango Chesoni* [2002] eKLR: They laid down the following six principles:

- a. First, there must be an appeal pending before the higher Court;
  - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
  - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
  - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
  - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
  - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
13. It is evident that there is an appeal pending. As to whether the appeal is arguable, the same is a preserve of the actual appeal. However, a perusal of the memorandum of appeal and a consideration of the record of the trial court, in my mind, reveals that there is an arguable appeal against the conditional setting aside of ex parte interlocutory orders, especially with regards to the colossal amount sought to be deposited as a requirement to set aside the same.
14. The conditions of the setting aside are that execution shall issue if the decretal sum is not deposited in an escrow account in the names of the parties. This beats the purpose of the setting aside of the judgement and therefore, if the orders for stay are not granted, it follows that execution shall issue and the appeal against the conditional orders will be rendered an academic exercise. It is therefore my considered view that the appeal will be rendered nugatory if the orders for stay are not granted.
15. As to whether there are circumstances that make the stay of proceedings warranted as opposed to having the matter determined and taking up the appeal, I am convinced that the Applicant has proved the same. The consequence of the ruling of the trial court is essentially the same as that of the interlocutory judgement that he sought to set aside in the trial court, that he pay out the decretal sum or execution shall issue. Whether the decretal sum is paid into a joint account or the Respondent is able to execute the judgement of the trial court, the common denominator is that the Applicant shall have to pay out the decretal sum. it is therefore my view that in the circumstances, the prayer for stay of proceedings is warranted.
16. On whether the application was filed without delay, the impugned ruling was delivered on 27<sup>th</sup> may 2025 and the present application filed on 3<sup>rd</sup> June 2025 which was about a week later. The application was therefore filed without delay.
17. In the premises, I find that the Application dated 3<sup>rd</sup> June 2025 is merited and I order as follows;



- i. The proceedings and consequential orders in Eldoret Chief Magistrates' Civil Case No. E340 of 2024 are hereby stayed pending the determination of the Appeal herein.
- ii. Costs shall abide the outcome of the Appeal.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19<sup>TH</sup> DAY OF JUNE 2025**

**R. NYAKUNDI**

**JUDGE**

Representation:-

Ajaa Olubayi & Company Advocates

Bundotich Korir & Co. Advocates

