



**Guru Consulting Limited v Ettah (Civil Appeal E299 of 2024)
[2025] KEHC 8525 (KLR) (Commercial and Tax) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8525 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E299 OF 2024**

F GIKONYO, J

JUNE 5, 2025

BETWEEN

GURU CONSULTING LIMITED APPELLANT

AND

GODFREY ETTAH RESPONDENT

RULING

1. Before me is the appellant's Notices of Motion dated 6th March 2025 and 7th March 2025, seeking a stay of:-
 1. Proceedings slated for 7th May 2025 in Nairobi SCCCOMM No. E663 of 2024, when the appellant's director is required to show cause why he should not be arrested and detained in prison in execution of the judgment and decree dated 10th September 2024.
 2. execution of the Judgment and decree dated 10th September 2024 Nairobi SCCCOMM No. E663 of 2024.
2. The first application is supported by the affidavit sworn by the appellant's director, Aswani Teddy Gafna on 6th March 2025. The respondent's claim before the Small Claims Court (SCC) emanated from an oral business agreement with the appellant for the use of its goodwill in performance of various tenders for implementation and facilitation of training programs from various institutions. Upon hearing the parties, the SCC found that the respondent had proved its claim and entered judgment against the appellant for Kshs. 502,359.64, costs of the suit and interest.
3. The appellant was aggrieved by the judgment of 10th September 2024 and filed an appeal to this court through a memorandum of appeal dated 9th October 2024.



4. The second application is supported by the supporting affidavit sworn by Jepher Kere, Advocate, on 7th March 2025. Both applications were grounded on the hearing of a notice to show cause application against the appellant's director that was slated to happen on 7th May 2025. The core contention was that the respondent sought to execute the judgment against the applicant.
5. The court declined the prayer in the application of 6th March 2025 to stay the hearing of the application on 7th March 2024 because the application had been filed on the eve of the hearing of the NTSC. Mr. Kere deposed that there was a mistake on the face of the record as the NTSC application was slated for 7th May 2025, not 7th March 2024.

Mention for directions

6. On 12th March 2025, Ms. Kemunto, for the respondent, indicated that she would file a replying affidavit even though the appellant's application has been overtaken by events since the notice to show cause was declined. She proposed that the appellant deposits the decretal sum as security.
7. Mr. Kere, for the appellant, mentioned that there was a date set for notice to show cause. He also stated that the decree is one-sided, hence their application for an unconditional stay, because the appellant is seeking a re-trial.

Analysis and Determination

8. I have considered the applications and the supporting affidavits. The respondent did not file a replying affidavit, despite its advocate indicating that she would.

Stay of NTSC proceedings

9. On the issue of stay of NTSC proceedings; the court noted during the mention that, there may not be any danger that may arise from a Notice to Show Cause which had been declined. Consequently, prayer for stay of the NTSC proceedings has been rendered moot, having been overtaken by events.

Stay of Execution

10. The live issue is whether the appellant has established sufficient cause for stay of execution of the judgment and decree dated 10th September 2024 Nairobi SCCCoMM No. E663 of 2024.
11. The court has the discretion to grant a stay pending appeal. However, the discretion must be exercised judiciously and not on a whim.
12. In determining sufficient cause for stay of ExEcution pending appeal, the court be concerned with whether substantial loss will occur if stay is not granted and security. Order 42 Rule 6 of the Civil Procedure Rules.

Sufficient cause

13. From the memorandum of appeal dated 9th October 2024, the grounds therein do not reveal a frivolity.

Substantial loss and security

14. Has the appellant shown that it would suffer substantial loss if execution proceeds? Put differently, "that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal." James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR)



15. The foremost consideration is to exercise discretion to grant a stay so as not to prevent an appeal. *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR)
16. Nonetheless, in determining whether to grant a stay, the court must balance the competing rights; the appellant's right of appeal and the respondent's right to enjoy the fruits of its judgment. *Machira t/a Machira & Co Advocates v East African Standard* [2002] KEHC 1167 (KLR)
17. Ordinarily, where stay is granted, the balancing of the rights is attained through appropriate orders on security for the payment of the decree that may ultimately be binding upon the appellant. The respondent's counsel proposed that the appellant deposits the decretal sum as security. The appellant's counsel prayed for an unconditional stay, because the appellant is seeking a re-trial.
18. In my considered view, the provision of security would ameliorate any prejudice to the respondent whilst the appellant pursues the appeal. It is upon the court's discretion to determine the suitable security contingent on the circumstances of the case. *Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others* [2014] eKLR

Disposal

19. Based on the circumstances of this case, I make the following orders:-
 1. The execution of the Small Claims Court Judgment and decree dated 10th September 2024 Nairobi SCCCOMM No. E663 of 2024 is hereby stayed pending the hearing and determination of the appeal filed by the appellant, on condition that the appellant shall deposit the entire decretal sum of Kshs. 502,359.64/- in an interest-earning account in the joint names of legal counsel for the parties herein within 30 days of today.
 2. In the event of failure to comply with (1) above, the stay will automatically lapse without necessity to apply.
 3. No order as to costs as there were no responses.
 4. As the appeal is fresh, it is hereby transferred to the Civil Appeals Division for hearing and disposal.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 5TH DAY OF JUNE, 2025

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F. GIKONYO M

JUDGE

In the presence of: -

1. Kere for Appellant
2. No appearance for Respondent
3. CA Kinyua

