



**Kimani v Equity Bank Kenya Limited (Civil Appeal
E012 of 2024) [2025] KEHC 8146 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL APPEAL E012 OF 2024**

CW MEOLI, J

JUNE 12, 2025

BETWEEN

GABRIEL MAINA KIMANI APPLICANT

AND

EQUITY BANK KENYA LIMITED RESPONDENT

RULING

1. Gabriel Maina Kimani (hereafter the Applicant) filed the motion dated 27.02.2024 seeking primarily to stay execution of the ruling delivered on 15.02.2024 in Ngong Civil suit No E273 of 2022 (hereafter the subject ruling) pending the hearing and determination of the appeal preferred in respect of the said ruling. The motion is expressed to be brought under Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules (CPR) and sections 1A, 1B and 3A of the *Civil Procedure Act* (CPA).
2. The motion is supported by the Applicant's affidavit dated on 27.02. 2024, amplifying the grounds on the face of the motion. Therein, he deposed that the subject ruling dismissed his application dated 3.11.2022 seeking a temporary injunction against Equity Bank Kenya Limited (hereafter the Respondent). He averred that being thereby aggrieved he lodged an appeal; that he is apprehensive that the Respondent will commence execution at any time which will result in what he calls "substantial irreparable loss and damage" (sic) while the appeal is brought in exercise of his legal rights, and not intended to deny the Respondent the fruits of their judgement. Further asserting that this application has been brought without undue delay, the Applicant expressed willingness to abide by any orders imposed by the court, and finally pointing out that no prejudice shall be suffered by the Respondent if the orders sought are granted.
3. The motion was opposed by way of a replying affidavit dated 25.03.2024 and sworn by Samuel N. Wamaitha the Respondent's assistant manager, legal services. To the effect that the orders made in the subject ruling were negative in nature and hence incapable of being stayed. Because, by the said ruling, the lower court struck out (sic) the Applicant's motion and did not order parties to do or refrain



from doing anything. Besides, the Applicant has not met the threshold for the grant of the orders for stay, by demonstrating the likelihood of substantial loss, thus the manner in which his appeal will be rendered nugatory. Nor offered security, and in any event, there is no money decree involved. In the Respondent's view, the application lacks merit and bona fides and ought to be dismissed.

4. The application was canvassed by way of written submissions. The Applicant's submissions dated 14.03.2025 commence with a recital of the key principles governing the grant of stay of execution under Order 42 Rule 6 (2) of the CPR. Namely, demonstration of the likelihood of substantial loss and security for the due performance of the decree. Asserting the objective of the stay orders to be the preservation of the subject matter, to avoid injustice or hardship but not to aid delay. Counsel citing as authority the decision in *Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya)* [2015] eKLR.
5. Addressing matters which rightfully belong to the appeal, counsel contended that the Applicant has an arguable appeal which will be rendered nugatory, if the orders sought are denied. In support of this proposition counsel invoked the dicta in *Stanley Kang'ethe Kinyanjui -vs- Tony Ketter & 5 others* [2013] KECA 378 (KLR).
6. By submissions dated 21.03.2025 the Respondent's counsel submitted that the orders targeted by the present motion were negative orders, the ruling essentially returning the parties to the status quo obtaining before the suit in the lower court. Asserting that orders amenable to stay ought to be positive and enforceable, counsel relied on the decision of the Court of Appeal in *Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya)* Civil Application no NAI 133 of 2015 [2015] eKLR (per Kantai JA) as cited in the case of *Belinda Mbuu & another v John Kariuki Mbuu & 2 others* (Civil Case 198 of 2022) [2022] KEHC 12735 (KLR).
7. Further, the Respondent's counsel contended that the Applicant has not met the threshold for grant of the orders sought as stipulated under Order 42 Rule 6 of the C.P.R. Having failed to demonstrate how they would suffer substantial loss should the stay orders not be granted. That it is not merely enough to assert substantial loss without a demonstration. Counsel here citing the case of *Machira T/A Machira & Co Advocates-vs-East Africa Standard* [2002] eKLR.
8. Moreover, it was contended that as a bank, the Respondent was capable of refunding any sums as may eventually be found due to the Applicant, hence should be allowed to proceed with the exercise of their statutory power of sale. Finally reiterating that no security had been offered by the Applicant. The court was urged to find the motion bereft of merit, incompetent and liable for dismissal.

Analysis and Determination

9. The court has considered the material canvassed by the parties in respect of the motion. The motion invokes the provisions of Order 42 Rule 6 CPR granting discretionary power to the court to stay execution of a decree pending. See *Butt v Rent Restriction Tribunal* [1982] KLR 417. Order 42 Rule 6 of the Civil Procedure Rules provides that:

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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”.

10. What the Applicant seeks by his motion is “a temporary stay of execution of enforcing the whole of the ruling delivered by... on 15th day of February 2024 in Civil Suit No. E273 of 2022” (sic) pending determination of the appeal. The subject ruling dismissed his application seeking a temporary injunction pending determination of the lower court suit. The outcome of the ruling was a dismissal order, a negative order incapable of enforcement as it did not direct any party to do or refrain from doing anything.

11. The Court of Appeal in the case of *Kaushik Panchamatia & 3 Others v Prime Bank Limited & Another* [2020] eKLR had this to say in a similar situation involving a negative order: -

“...a negative order is incapable of being stayed because there is nothing to stay. It therefore, follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed for by Applicants.”

12. Similarly, in its earlier decision, *Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya)* [2015] eKLR the Court held as follows: -

“An order for stay of execution [pending appeal] is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a Judgment. The delay of performance presupposes the existence of a situation to stay – called a “positive order” – either an order that has not been complied with or has partly been complied with. See, for this general proposition, the holding of the Court of Appeal of Uganda in *Mugenyi & Co. Advocates v National Insurance Corporation* (Civil Appeal No. 13 of 1984) where it was stated: ‘... an order for stay of execution must be intended to serve a purpose ...’”

See also the decision of the Court of Appeal for East Africa in *Western College of Arts and Applied Sciences v Oranga & Others* [1976- 80] 1 KLR 63; and *Mwanthii & 2 Others v Mukami* [2024] KECA 624 (KLR).

13. The orders in the subject ruling being negative in nature, there is nothing to be stayed by this court. The motion dated 27.02.2024 is without merit and is hereby dismissed with costs to the Respondent.

DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 12TH DAY OF JUNE 2025.

C.MEOLI

JUDGE

In the presence of:



For the Applicant: Ms. Ang'ela h/b for Mr. Okatch.

For the Respondent: Ms. Kamau

C/A: Lepatei

