



Manipal International Printing Press Limited v Wandie t/a Nyumbani Sugar Limited & another (Civil Appeal E517 of 2025) [2025] KEHC 12219 (KLR) (Civ) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 12219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E517 OF 2025

TW CHERERE, J

JUNE 5, 2025

BETWEEN

MANIPAL INTERNATIONAL PRINTING PRESS LIMITED APPELLANT

AND

MARTIN WANDIE T/A NYUMBANI SUGAR LTD 1ST RESPONDENT

FAINA ENTERPRISES LIMITED 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 14th May 2025, brought under Sections 1A, 1B, 3, 3A, 3B, and 63(e) of the *Civil Procedure Act* and Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*, the Appellant seeks:
 1. A stay of execution of the judgment and decree delivered on 08th November 2024 in SCCCOMM E3408 of 2024 and all other consequential orders pending the hearing and determination of the appeal;
 2. That costs of this application be provided for.
2. The application is supported by an affidavit sworn on 14th May 2025 by Yvonne Ndiga, the Appellant's Marketing Manager. It is deponed that judgment was entered in favour of the Respondent in the sum of KES. 250,000 together with interest and costs, culminating in a total decree of KES 335,754.79 as per the certificate of costs and decree issued on the same day. That the Respondent has since obtained warrants of attachment and sale dated 08th May 2025 and proclaimed the Appellant's motor vehicles, registration numbers KDE 360G and KBY 370J. The Appellant contends that the appeal is arguable with high chances of success, and unless stay is granted, it risks irreparable loss and the appeal will be rendered nugatory. It further undertakes to abide by any directions of the Court as to security.



3. The application is opposed through a replying affidavit sworn by the 1st Respondent on 21st May 2025. The Respondent confirms that warrants of attachment were issued and a proclamation was carried out. The Respondent contends that the application is merely reactive, having been prompted solely by the commencement of execution proceedings. The Respondent further argues that the Appellant has failed to demonstrate substantial loss, and that the application thus lacks merit.
4. By a further affidavit sworn on 03rd June 2025 by Yvonne Ndiga, the Appellant contends that it is not in any manner trying to delay execution but is keen on pursuing the appeal and should be afforded an opportunity to be heard on the same.

Analysis and Determination

5. The principles governing stay of execution pending appeal are settled under Order 42 Rule 6(2) of the *Civil Procedure Rules*, which provides:
 - “No order for stay of execution shall be made under subrule (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.”
6. Drawing from the application and the affidavits on record, the issues for determination are:
 1. Whether the application was brought without unreasonable delay;
 2. Whether the Appellant has demonstrated substantial loss;
 3. Whether the Appellant has provided or is willing to provide security.

Delay

7. The impugned judgment was delivered on 08th November 2024, yet the application was only filed on 14th May 2025, six months later and after execution had already commenced. The delay is not explained, and the application appears to have been prompted by the proclamation of the Appellant’s vehicles on 08th May 2025.
8. Where an application for stay is filed long after judgment and only when execution is underway, it betrays a lack of diligence and undermines the credibility of the claim that the appeal may be rendered nugatory.
9. This Court finds that the Appellant failed to act timeously and only approached the Court in reaction to execution proceedings. Such delay is fatal in an application seeking equitable relief.

Substantial Loss

10. In *James Wangalwa & another v Agnes Naliaka Cheseto* [2012]eKLR, the court stated;
 - “No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR.



This is so because execution is a lawful process. The applicant must establish other factors which show 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.... The issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory”

11. In *Equity Bank Ltd v Taiga Adams Company Ltd* [2006] eKLR, the Court again stated that the only way of showing or establishing substantial loss is by showing that if the decretal sum is paid to the respondent, in the event the appeal succeeds, the respondent would not be in a position to pay or reimburse because he has no means of doing so.
12. The court again made it clear in *Machira T/A Machira & Co Advocates v East African Standard (No 2)* [2002] 2 KLR 63, the court emphasized that it is not enough merely to state that substantial loss will result, or that the appeal if successful will be rendered nugatory as that will not do.
13. The Appellant argues that unless execution is stayed, it will suffer irreparable loss. However, no specific or compelling evidence has been placed before the Court to demonstrate that execution of the decree, through attachment and sale of the proclaimed assets, would occasion harm that cannot be remedied upon a successful appeal. While the proclamation of motor vehicles is acknowledged, the Appellant has not demonstrated how execution would result in prejudice so exceptional as to justify stay of execution.
14. In *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1982-88] 1 KAR 1018, the Court of Appeal held:

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay. That is what has to be prevented.”
15. The mere prospect of execution, without clear and compelling evidence of irreparable prejudice, does not in itself amount to substantial loss. In the absence of such demonstration, the Court finds that the Appellant has not discharged the evidentiary burden under this limb.

Security

16. Whereas the Appellant has made partial deposit towards satisfaction of the decree, it is trite that compliance with one limb of Order 42 Rule 6(2) does not suffice. The three requirements of timely application, demonstration of substantial loss, and provision of security are cumulative and must be satisfied conjunctively. In the absence of demonstrated substantial loss, and given that the application was brought only after execution had commenced, the offer of security cannot, on its own, warrant the grant of stay.
17. The Appellant’s conduct in approaching the Court belatedly and reactively, without establishing the likelihood of irreparable prejudice, renders the application undeserving of discretionary relief.

Disposition

18. From the foregoing analysis, the Court is satisfied that the Appellant has failed to satisfy the cumulative requirements under Order 42 Rule 6(2) of the *Civil Procedure Rules*.
19. Accordingly, the Court finds no basis to exercise its discretion in favour of the Appellant. The Notice of Motion dated 14th May 2025 is thus dismissed with costs to the 1st Respondent.
20. This matter shall be mentioned before the Deputy Registrar on 31st July 2025 to confirm the filing of the record of appeal



DELIVERED AT NAIROBI THIS 05TH DAY OF JUNE 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellants - Ms. Nekoye for Teddy & Co.Advocates

For Respondent - Present in person

