



**Sleek Trading Limited v Itambo (Civil Appeal E428 of 2024)
[2025] KEHC 12137 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E428 OF 2024
F WANGARI, J
JUNE 23, 2025**

BETWEEN

SLEEK TRADING LIMITED APPELLANT

AND

GODWIN MWANYAI ITAMBO RESPONDENT

RULING

1. This is a Ruling on an Applications dated 13/12/2024. The Application seeks the following Orders:
 - i. Spent
 - ii. That leave be granted to the firm of Omulama E.M & Company Advocates to come on record for the Applicant in place of N K Patricks & Associates Advocates LLP.
 - iii. That pending the hearing and determination of the Application and the Appeal, there be stay of execution of the Judgment by Hon. V. Muthoni on 21/11/2024.
 - iv. That costs be provided for.
2. The Application is premised on the Grounds stated inter alia that the Applicant being dissatisfied with the legal services of N K Patricks & Associates, who was on record until the time of delivery of judgment, wishes to change representation to the firm of Omulama E.M & Company Advocates.
3. The Applicant who is a car dealer, stated that Judgment of the lower court having been entered against it, the Respondent is likely to execute by targeting its vehicles leading to great loss. it was further stated the Applicant had filed a Memorandum of Appeal and the intended appeal had triable issues and has high chances of success.
4. Though the Replying Affidavit is not on the court record, both parties make reference to the Replying Affidavit dated 16/01/2025 opposing the application on grounds that the firm of Omulama Advocates



had not complied with Order 9 Rule 9 of the [Civil Procedure Rules](#), and that the Appellant had failed to provide security before seeking for orders for stay of execution.

5. The court directed that the application be canvassed by way of written submissions. Both parties complied by filing rival submissions. I have considered the submissions and authorities relied upon.

Analysis

6. I have analyzed the Application, response and the submissions and authorities filed by the parties in support and opposition to their respective positions. The issues for determination are;

- a. Whether the firm of Omulama E.M & Co. Advocates ought to be granted leave to come on record,
- b. Whether the Appellant has satisfied the conditions for the grant of stay of execution pending Appeal.

7. On the first issue, Order 9, Rule 9 of the [Civil Procedure Rules](#) provides as follows;

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

8. Further, Order 9, Rule 10 of the [Civil Procedure Rules](#) provides as follows;

“An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.”

9. From the above section, I find that the Applicant followed the right procedure in seeking leave to have the current firm of advocates come on record. Even though the Respondent objected to the same stating that the firm of N K Advocates will be denied their fees. It is a fact that the above order is meant to safeguard the interests of the former advocates on record in ensuring that their fees is paid.

10. The former firm of advocates filed this appeal. Though there is no evidence that the said firm is aware of this application, the said firm of advocates having been mapped in the e-filing system, they can file their Advocate/ Client Bill of Costs in the event the fees was not paid. By granting leave as sought does not deny the former firm of advocates their payment of fees and no prejudice shall be occasioned to either party involved.

11. On the second issue, principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for 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.

12. Section 1A (2) of the [Civil Procedure Act](#) provides that;

“the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective”

13. While under section 1B some of the aims of the said objectives are;

“the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”

14. Therefore, an Applicant seeking stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2), aforementioned: namely

- (a) that substantial loss may result to the applicant unless the order is made,
- (b) that the application has been made without unreasonable delay, and
- (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given. (See [Antoine Ndiaye v African Virtual University](#) [2015] eKLR).

15. This court has to ascertain whether the Applicant has demonstrated loss that it stands to suffer if the order of stay is not granted. From the affidavit in support of the Application, it is deposed that should the order be declined, the Applicant stands to suffer substantial damage after execution takes place. The Respondent on the other hand strongly argues that the Applicant has not demonstrated substantial loss to warrant the grant of stay.

16. Substantial loss for purposes of Order 42 rule 6 of the [Civil Procedure Rules](#) was discussed in [James Wangalwa & Another v Agnes Naliaka Cheseto](#) [2012] eKLR, that:

“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.”

17. The Court, in [RWW v EKW](#) [2019] eKLR, considered the purpose of a stay of execution order pending appeal, in the following words:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who



should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

9. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

18. Having considered the Application vis-à-vis the response thereto, I am of the considered view that the Applicant has demonstrated that it will suffer substantial loss in the event that the Appeal succeeds.

19. This Application was filed timeously. However, I also have to consider whether security for the decretal sum should be furnished. In the instant Application, the Applicant offered security of Kshs. 100,000. I am inclined to find that security for the due performance of the decree herein is essential to protect the rights of the Respondent pending the determination of the Appeal. The decretal sum being Kshs. 695,034 ought to be deposited as security.

Determination

20. The upshot of the foregoing, the Notice of Motion dated 13/12/2024 has merits and is allowed as follows:

- a. That leave is hereby granted to the firm of Omulama E.M & Company Advocates to come on record for the Applicant.
- b. That stay of execution of the Judgement in Mombasa SCCC No. E414 of 2024 pending the hearing and determination of the Appeal.
- c. The Applicant shall deposit the accrued decretal amount of Kshs. 695,034/= into a joint interest earning account in the name of the Advocates for the parties within 21 days.
- d. In default of (b) above, stay orders lapses and the Respondent is at liberty to execute.
- e. Costs shall abide the outcome of the Appeal.
- f. The Record of Appeal be filed and served within the next 60 days.
- g. Mention for directions on 22/10/2025.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 23RD DAY OF JUNE, 2025.

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F. WANGARI

JUDGE

In the presence of;

Ms. Mokaya Advocate for the Applicant

Ms. Kerubo Advocate for the Respondent

MS Getrude, Court Assistant

