



**Abubakar v Momentum Credit Limited & another (Commercial Appeal
E004 of 2025) [2025] KEHC 10729 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
COMMERCIAL APPEAL E004 OF 2025
RN NYAKUNDI, J
JULY 23, 2025**

BETWEEN

AHMED ABUBAKAR APPELLANT

AND

MOMENTUM CREDIT LIMITED 1ST RESPONDENT

**ROBERT W MAINA T/A ANTIQUE AUCTIONS AGENCIES 2ND
RESPONDENT**

RULING

1. Before this court is a Notice of Motion dated 11.7.2025 seeking the following orders:-
 - a. That service of this application be dispensed with in the first instance.
 - b. That there be a stay of execution in Eldoret Small Claims court comm case No E358 of 2024 – Ahmed Abubakar v Momentum Credit Limited & Another coupled with the sale and transfer of the motor vehicle registration no KCT 541 A make Nissan Note pending the hearing and determination of this application in the first instance
 - c. That there be a stay of execution in Eldoret Small Claims Court Comm Case No. E358 of 2024 Ahmed Abubakar v Momentum Credit Limited & Another pending the hearing and determination of the appeal herein
 - d. That the motor vehicle registration no KCAT 541 A make Nissan Note be released on running attachment pending the hearing and determination of this application in the first instance
 - e. That the motor vehicle registration no KCT 541 A maker Nissan Note be released to the appellant by the respondents pending the hearing and determination of appeal herein Which Application is based on the grounds:



- a. That the Appellant’s application for stay of execution pending appeal was considered by the court from whose decree is the subject of this appeal
 - b. That the applicant aggrieved by the decision of the trial court on the decision of the application for stay of execution
 - c. That the appellant has moved this court in the exercise of its jurisdiction to exercise the liberty, on application being made, to consider such application and to make such order thereon as may to it seem just an application for stay of conferred by law.
2. The same is annexed with an affidavit sworn by Ahmed Abubakar which states as follows:
- a. I am the appellant in this matter hence competent to swear this affidavit
 - b. That I impleaded the respondents vide Eldoret Small Claims Court Comm Case No E358 of 2024 – Ahmed Abubakar v Momentum Credit Limited & Another seeking for
 - a. A declaration that the lending contract as entered into is vitiated by breach of the law and is unconscionable by the charging of interest which is more than 2 times the sum disbursed as loan hence the claimant is discharged from the contract and is only liable to pay the balance of sum advanced of Kshs 147,740 after deduction of the amount paid of Kshs 92,820.
 - b. A declaration that the claimant is not liable to pay Kshs 50,000 as insurance premiums and kshs 48,000 as fees for breach of section 56 and 58 of the consumer protection Act cap 501 respectively
 - c. A declaration that the exercise of post default rights by the respondents was vitiated by that breach of section 67 of the Movable Property Security Rights Act
 - d. An Order for the release of the vehicle registration no KCT 541 A to the claimant by the respondents unconditionally
 - e. An assessment and an award of damages for loss of income at the rate of kshs 2,000 as of 22.3.2024 daily until release of the vehicle registration no KCT 541 A coupled with general damages for detinue and breach of the claimants rights as a consumer under the consumer protection Act cap 501
3. That only the 1st Respondent filed a defence. Annexed hereto is the defence and counter-claim marked as “B”
4. That the matter proceeded for hearing and judgment was delivered on the 14th March, 2025 in which my claim was dismissed and the respondents counter claim for shs 274,5000 was allowed. Annexed hereto is the judgement marked as “c”
5. That being aggrieved by the judgment I lodged this appeal and filed an application for stay of execution abiding its outcome in the trial court annexed hereto is the application marked as “D”
6. That the 1st respondent filed a replying affidavit to the application. Annexed hereto is the replying affidavit marked as “E”

Decision

1. The Respondent was duly served but he elected not to file a replying affidavit or any such defense with an application. It is trite that the Order 42 Rule 1 of the Civil Procedure Rules,



makes it quite clear that this court make orders for a stay of execution of any judgement or proceedings against which and Appeal has been made pending the determination of the Appeal. The execution means quite simply the process for enforcing or giving effect to the judgement of the court and it is completed when the judgement creditor or decree holder gets his or fruits of her judgement which has been determined on the merits by the trial court. In determining the issue of stay the court is guided by the condition precedent of the application being filed without unreasonable delay, that the substantial loss which is likely to be incurred if the stay is declined and further the court should consider the security for costs or deposit of the entire decretal sum or half of it pending the hearing and determination of the Appeal. As a general rule, the Applicant has filed an affidavit showing that if the decretal sum is paid out there is no reasonable probability of being refunded back by the Respondent in the event the Appeal succeeds. In the case of Hammond Suddard Solicitors v Agrichem International Holding Ltd (2001) EWCA Civ 2965) “ whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular if a stay is refused what are the risks of the appeal being stifled if a stay is granted and the appeal fails what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent.

2. On the issue of the substantial loss, the court in James Wangalwa & Another vs Agnes Naliaka Cheseto (2012) eKLR held as follows: 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.”
3. I have considered the affidavit evidence in support of the Notice of Motion and there is merit to grant the following orders:-
 - a. That there be stay of execution in Eldoret Small Claims Court Comm Case No E358 of 2024. – Ahmed Abubakar v Momentum Credit Limited & another pending the hearing and determination of the appeal herein.
 - b. That the record of Appeal be filed within 30 days from today’s date.
 - c. That the pre-trial conference be held on 17.9.2025
 - d. That the costs to abide the outcome of the Appeal.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 23RD DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

