



Achieng t/a Dolhays Knitwear v Kosgei & another (Civil Appeal E090 of 2025) [2025] KEHC 10186 (KLR) (11 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10186 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E090 OF 2025
RN NYAKUNDI, J
JULY 11, 2025**

BETWEEN

EVERLYNE ACHIENG T/A DOLHAYS KNITWEAR APPLICANT

AND

ANN KOSGEI 1ST RESPONDENT

**THE BOARD OF MANAGEMENT, KAPLELACH HIGH
SCHOOL 2ND RESPONDENT**

RULING

1. The Applicant filed a Notice of Motion Application dated 7th May 2025 seeking the following orders;
 1. Spent
 2. Spent
 3. Spent
 4. That pending the hearing and determination of this Appeal, this Honourable Court be pleased to stay the execution of the judgement and/or any consequential orders processes thereto by the Respondents either by themselves, their servants, agents, employees and/or any other person authorized by them.
 5. That costs of this application be in cause.
2. The Application is expressed to be brought under Article 159(2) of the *Constitution* of Kenya 2010, section 1A, 1B and 79C of the *Civil Procedure Act*; Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules 2010*. and 'all other enabling provisions of the law'.
3. The Application is premised on the grounds on the face of it. The Applicant contends that she is desirous of filing an appeal against the decision of the trial court rendered on 4th April 2025 in Eldoret



SCC No. E947 of 2023. Further, that without stay of execution orders, the Respondents are likely to execute the judgement and decree to her detriment as she will suffer substantial loss.

4. I note that there is no supporting affidavit to the application. The copy filed in the case tracking system does not contain a supporting affidavit and neither does the copy placed in the file. Additionally, there is no response filed by the Respondents.

Analysis & Determination

5. The following issues arise for determination; Whether the Application for stay of execution is merited
6. Before delving into the provisions for stay of execution, the first port of call is the defect in the application to wit; the failure to file an affidavit in support of the application. An Application seeking stay of execution is filed by way of Notice of Motion and MUST be accompanied by a Supporting Affidavit. This permissive nature of affidavits in support is reflected in Order 51 Rule 4 of the [Civil Procedure Rules](#) which provides as follows;

“ Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”
7. In the absence of the supporting affidavit, the application is without legs to stand on. An affidavit in support of the Application is a substantive requirement and not a mere technicality and further, the requirement of the same is couched in mandatory terms. It follows that the Application is fatally defective.
8. In the premises, I issue the following orders;
 - i. The Notice of Motion Application dated 7th May 2025 is struck out in its entirety for want of a supporting affidavit.
 - ii. Costs to the Respondents.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF JULY 2025.

.....

R. NYAKUNDI

JUDGE

M/s Njiru Kibaru & Co. Advocates

