



Eyani v Opeto (Civil Appeal E040 of 2024) [2025] KEHC 9811 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9811 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E040 OF 2024
WM MUSYOKA, J
JULY 4, 2025**

BETWEEN

RICHARD EYANI APPELLANT

AND

FIDELIS OPETO ALIAS KOFI RESPONDENT

*(Appeal from judgement and decree of Hon. Antoinette Ogange,
Adjudicator, Malaba SCCC No. E010 OF 2024, OF 14th August 2024)*

RULING

1. The motion, dated 7th March 2024, is for stay of execution, stay of order for a motor vehicle to be placed under police custody, and stay of proceedings in Malaba SCCC No. E10 of 2024. The grounds are that there was a valid and credible defence and counterclaim, that raised triable issues, the impounding of the vehicle exposed the appellant to loss of money, and if a stay order is not granted the appellant would suffer irreparable harm.
2. In the affidavit, it is averred that the respondent had applied for the motor vehicle in question, whose details are not disclosed, to be placed under police custody, and that application was allowed. The court proceeded with the matter on 6th March 2024, despite an application for adjournment being made by the Advocate for the appellant. The respondent did not have a valid practising certificate.
3. There is a reply, vide an affidavit sworn on 17th May 2025, by the respondent. It is averred that there is another appeal, arising from the same matter, being Busia HCCA No. E09 of 2024, where an order had been made for deposit of the decretal amount in court as security for costs, but that appeal was withdrawn. It is argued that a money decree ought to be stayed only subject to deposit of the decretal amount in court. It is argued further that the decree was passed on 14th August 2024, yet the moneys have not been paid to date. It is averred that the appellant has not been genuine in the process.
4. Parties were to file written submissions. I do not, so far, see any in the record before me.



5. The legal system, through the *Constitution* and the statutes, provides for access to justice. That means to access both the primary courts as well as the appellate courts.
6. The appellant feels that his access to the primary court was hindered in the circumstances set out in his affidavit. He would like to have access the appellate court, to have the proceedings of the primary court audited, to determine whether what he alleges has any foundation.
7. Execution of the decree sought to be appealed against would somewhat complicate that pursuit of justice, for if the decree executed before he is heard his appeal is heard his appeal would be imperilled. It may be more just to have the decree stayed, so that status quo is preserved, awaiting hearing of appeal, which has already been filed.
8. However, the respondent has a decree. The trial court found in his favour. He is entitled to the judgment of the trial court, until and unless the same is set aside or varied. Unlike in the period before the passing of the decree, where the respondent had nothing concrete, expect allegations in his claim, his rights have been settled by the court, in the form of the pronouncement that he is entitled to the money the subject of the claim.
9. The filing of an appeal does not entitle the appellant to an automatic stay of execution of the decree. A case has to be made out. When a case is made out or the appellant court is inclined to grant stay, as a price for the stay, the appellant is required to provide security for due performance. That may take many forms, including deposit of the decretal amount in court. That would balance out the interests of both sides. For the decree-holder, the assurance that the decretal amount is secured in court, and of for the judgement-debtor, the assurance that the decree would not be executed before his appeal is heard and determined, which would render it moot.
10. The appellant has made a lot of play absent a motion vehicle that the trial court has ordered to be impounded at the police station. The particulars of that vehicle have not been disclosed in the papers filed by the appellant. I have not seen the order relating to it. I have not seen any registration particularly relating to it. The little I say about it the better.
11. I believe I have said enough to demonstrate that the appellant is entitled to his day in court. He should have the stay of execution of the decree and stay of the proceedings at the trial court., that he seeks However, as a condition for the stay, let him deposit the entire decretal amount in court. He has thirty days to do so. In default, the stay orders shall expire.
12. To move the matter forward, let the Deputy Registrar call for the original trial records, and let the appellant file his record of appeal within 21 days. The matter shall be mentioned on 22nd September 2025 for compliance and directions for the disposal of the appeal.
13. It is so ordered.

DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 4TH DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Henry Wasilwa, instructed by Wasilwa Makhakara & Company, Advocates for the appellant.

Mr. Moses Ouma, instructed by BM Ouma & Company Advocates for the respondent.

