



Eleete Interiors Limited v Stanbic Bank Kenya Limited (Civil Appeal E362 of 2024) [2025] KEHC 9530 (KLR) (Civ) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9530 (KLR)

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

CIVIL

CIVIL APPEAL E362 OF 2024

TW OUYA, J

JULY 3, 2025

BETWEEN

ELEETE INTERIORS LIMITED APPLICANT

AND

STANBIC BANK KENYA LIMITED RESPONDENT

RULING

1. By a Notice of Motion dated 18th March 2024, the Applicant herein substantially seeks this honourable court to stay the execution of the Ruling and order of the Hon S.A. Opande (PM) delivered on 20th February 2024 arising out of MCCC/E3155/ 2023. Accordingly, the Applicant also seeks to restrain the Respondents from advertising for sale, attaching, selling by public auction, mortgaging, charging or interfering in any manner whatsoever with the suit property.
2. The Application was supported by the affidavit of Susan Atemo Elisha, a director of the Applicant herein. According to her, she entered into an asset financing agreement with the Respondent where she financed Kshs. 3,200,000.00 for purchase of a motor vehicle registration number KDX 939X BMW-X4. She therefore obtained a loan facility from the Respondent for purchasing the subject motor vehicle. She complied with the terms of the loan agreement until the vehicle was repossessed by the Respondent.
3. She deposes that she was never served with a proclamation notice prior to the Respondent unlawfully, illegally and in breach of lending terms impounding the subject motor vehicle. The Appellant further deposes that she has filed an appeal with a high chance of succeeding and that she stands to suffer irreversible harm and loss if the court fails to intervene urgently.
4. In response to the Application, the Respondent relied on the Replying Affidavit dated 29th April 2024 and sworn by Ronny Otieno, the Respondent's Team Leader-Secured Lending Rehabilitation and



Recoveries Department. The Respondent deposed that the application has failed to meet the required threshold as there has been no change in circumstances as the Applicant remains in default. Moreover, any loss that the Applicant is bound to suffer is quantifiable and capable of being compensated by an award of damages. Therefore, the grant of the orders sought would not be in the interest of justice. The Respondent urge that the application be dismissed with costs.

5. The Respondent also filed Grounds of Opposition dated 29th April 2024. The Respondent urged that the threshold established under Order 42 rule 6(2) of the Civil Procedure Rules has not been attained as the Applicant has failed to demonstrate that there is substantial loss to be suffered. Neither has the Respondent offered any security or expressed willingness to offer any security.
6. The Respondent also urged that the application is an abuse of the court process as it seeks to clog the Respondent's statutory right under the *Movable Property Security Rights Act*, 2017.
7. The Respondent further states that the Applicant remains in default of its loan repayment obligation. In any case, since filing of the suit since 2023, the Applicant has had sufficient time and opportunity to redeem the security or at the very least remedy the default but has failed to do so.
8. The Application was disposed through written submissions.
9. The Applicant submitted that he has met the threshold to warrant a stay of execution. He relied on Order 42 Rule 6 which states that:
 - (2) 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.
10. He further placed reliance on the overriding objectives outlined in the *Civil Procedure Act*, Section 1A, 1B and 3A which include inter alia:

‘Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.’
11. The Applicant further submitted that the subject motor vehicle is critical in its business operations therefore continued impounding if the suit property is detrimental to the Applicant. In urging this point, the Applicant relied on the case of *Century Oil Trading Company Ltd vs. Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007* where the court held in part that:

“The word ‘substantial’ cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the code expressly prohibits stay of execution as an ordinary rule it is clear the words ‘substantial loss’ must mean something in addition to all different from that... Where execution of a money decree is sought to be stayed, in considering whether the appellant will suffer substantial loss, the financial position of the applicant and that of the respondent becomes an issue. The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal. The court has to balance the interest of the applicant who is seeking to preserve the status quo pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruit of his judgment.”



12. On arguability of the appeal, the applicant submitted that he was not served with the proclamation notice thereby rendering the impounding of his motor vehicle procedurally defective and illegal. Therefore, failure to stay the trial court's decree will render the same an academic exercise much to the Applicant's detriment. Reliance was placed on the case of Kenya Women Microfinance Ltd versus Martha Wangari Kamau [2020] eKLR where the court stated:

“The law, therefore, appreciates that it may not be possible for the applicant to know the respondent's financial means. The law is therefore that all an applicant can reasonably be expected to do, is to swear, upon reasonable grounds that the Respondent will not be in a position to refund the decretal sum if it is paid over to him and the pending appeal was to succeed but is not expected to go into the bank accounts, if any operated by the Respondent to see if there is any money there. The property a man has is a matter so peculiarly within his knowledge that an applicant may not reasonably be expected to know them. In those circumstances, the legal burden still remains on the applicant, but the evidential burden would then have shifted to the Respondent to show that he would be in a position to refund the decretal sum.”

13. The Respondent on the other hand submitted that the Applicant is not entitled to the reliefs sought on the basis that the applicant has not satisfied the grounds for grant of stay orders on Order 42 Rule 6 of the Civil Procedure Rules. Reliance was placed on the case of Machira t/a Machira & Co Advocates versus East African Standard [2002]. He has not satisfied the court that substantial loss may result to him unless the order is made, that the application has been made without unreasonable delay and that the applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
14. It is also submitted that the applicant has not contended anywhere that the Respondent would be unable to compensate it in form of damages should the appeal be successful. Also, the appeal is not arguable because the issues raised in the memorandum of appeal are frivolous. The memorandum of appeal does not raise a single bonafide issue that can be fully argued before this honourable court. The debt in the matter has never been contested and the default is also not contested.
15. Though urging that the application be dismissed, the Respondent has submitted without prejudice that stay be granted on condition that the Applicant pays half the outstanding loan amount of kshs. 1,600,416.08 to the Respondent and deposit the balance of kshs 1,600,416.08 in a fixed joint interest account held by both Counsel.

Analysis and determination

16. I have considered the application, the supporting and replying affidavits and the submissions filed as well as the authorities relied upon.
17. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided under Order 42 rule 6(2) of the Civil Procedure Rules which provides as follows:

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.

18. In *Vishram Ravji Halai vs. Thornton & Turpin* Civil Application No. Nai. 15 of 1990 [1990] KLR 365, the Court of Appeal held that:

“...whereas the Court of Appeal’s power to grant a stay pending appeal is unfettered, the High Court’s jurisdiction to do so under Order 41 rule 6 of the Civil Procedure Rules is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay...”

19. To the foregoing I would add that the stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in sections 1A and 1B of the *Civil Procedure Act*, the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.

“According to section 1A(2) of the *Civil Procedure Act* “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” while under section 1B some of the aims of the said objective 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.”

20. In *Mbukoni Services Limited another v Mutinda Reuben Nzili 2 others* Misc Application No. 77 of 2021, the court stated that:

“32. . It therefore follows that all the pre-Overriding Objective decisions must now be looked at in the light of the said provisions. This does not necessarily imply that all precedents are ignored but that the same must be interpreted in a manner that gives effect to the said objective. What is expected of the Court is to ensure that the aims and intendment of the overriding objective as stipulated in section 1A as read with section 1B of the *Civil Procedure Act* are attained. It is therefore important that the Court takes into consideration the likely effect of granting the stay on the proceedings in question. In other words, the Court ought to weigh the likely consequences of granting the stay or not doing so and lean towards a determination which is unlikely to lead to an undesirable or absurd outcome. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie considering the fact that it is the business of the court, so far as possible, to secure that any transitional motions before the Court do not render nugatory the ultimate end of justice.”



21. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice. This was the position in *Jason Ngumba Kagu & 2 Others vs. Intra Africa Assurance Co. Limited* [2014] eKLR where it was held that:

“The possibility that substantial loss will occur if an order of stay of execution is not granted is the cornerstone of the jurisdiction of court in granting stay of execution pending appeal under Order 42 rule 6 of the Civil Procedure Rules. The Court arrives at a decision that substantial loss is likely to occur if stay is not made by performing a delicate balancing act between the right of the Respondent to the fruits of his judgment and the right of the Applicant on the prospects of his appeal. Even though many say that the test in the High court is not that of “the appeal will be rendered nugatory”, the prospects of the Appellant to his appeal invariably entails that his appeal should not be rendered nugatory. The substantial loss, therefore, will occur if there is a possibility the appeal will be rendered nugatory. Here, it is not really a question of measuring the prospects of the appeal itself, but rather, whether by asking the Applicant to do what the judgment requires, he will become a pious explorer in the judicial process.”

22. On the first principle, Platt, Ag,JA (as he then was) in *Kenya Shell Limited vs. Kibiru* [1986] KLR 410, at page 416 expressed himself as follows:

“It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money”.

23. On the part of Gachuhi, Ag,JA (as he then was) at 417 held:

“It is not sufficient by merely stating that the sum of Shs 20,380.00 is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement.”

24. The general rule is that the Court ought not to deny a successful litigant of the fruits of his judgement save in exceptional circumstances where to decline to do so may well amount to stifling the right of the unsuccessful party to challenge the decision in the higher Court. In *Machira T/A Machira & Co Advocates vs. East African Standard (No 2)* [2002] KLR 63 it was held that:

“to be obsessed with the protection of an appellant or intending appellant in total disregard or fitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the



court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court”.

25. Where the allegation is that the respondent will not be able to refund the decretal sum the burden is upon the applicant to prove that the Respondent will not be able to refund to the applicant any sums paid in satisfaction of the decree. Suffice to say as was held in *Stephen Wanjohi vs. Central Glass Industries Ltd. Nairobi HCCC No. 6726 of 1991*, financial ability of a decree holder solely is not a reason for allowing stay.

26. I therefore appreciate the sentiments expressed by the High Court in *John Gachanja Mundia vs. Francis Muriira Alias Francis Muthika & Another [2016] eKLR* that:

“There is doubt the Applicant has shown that substantial loss would occur unless stay is granted. However, I will be guided by a greater sense of justice. Courts of law have said that, with the entry of the overriding principle in our law and the anchorage of substantive justice in *the Constitution* as a principle of justice, courts should always take the wider sense of justice in interpreting the prescriptions of law designed for grant of relief.”

27. In the case of *Tropical Commodities Suppliers Ltd and Others vs. International Credit Bank Limited (in liquidation) (2004) E.A. LR 331*, the Court defined substantial loss in the sense of Order 42 rule 6 as follows:

“...Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal...”

28. It was therefore held in the case of *Tabro Transporters Ltd. vs. Absalom Dova Lumbasi [2012] eKLR*, thus:

“The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court in balancing the two competing rights focuses on their reconciliation which is not a question of discrimination.”

29. Accordingly, I hereby grant the following orders:

- a. There will be stay of execution pending the hearing of this appeal on conditions:
 - i. That the Appellant pays half of the decretal sum to the respondent and deposits the balance in a joint interest earning account in the names of the advocates for the respective parties in Kenya Commercial Bank, Thika or gives a Bank Guarantee from a reputable financial institution covering the said balance for the whole duration of the intended appeal
 - ii. That both conditions to be complied with within 30 days from the date of this ruling and in default this application shall be deemed to have been dismissed with costs to the Respondent.



b. That costs of this application will be in the intended appeal.

DATED, SIGNED AND DELIVERED ELECTONICALLY THIS 3RD JULY, 2025.

HON. T. W. OUYA

JUDGE

