



**Jubilee General Insurance Limited v Munene (Civil Appeal
E159 of 2024) [2025] KEHC 9929 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9929 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E159 OF 2024
SM GITHINJI, J
JULY 10, 2025**

BETWEEN

JUBILEE GENERAL INSURANCE LIMITED APPELLANT

AND

ANTHONY MUNENE RESPONDENT

RULING

1. For determination is the Notice of Motion dated 20/3/2025 pursuant to Sections 1A, 1B, 3A & 80 of the *Civil Procedure Act*, Order 42 Rule 6, Order 45 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules and Article 50 (1) of *the Constitution*, seeking that:
 1. Spent
 2. This Honorable Court be pleased to issue an order staying execution of the Judgment delivered on 11th September, 2024 in Meru CMCC No. E334 of 2022; Anthony Munene Vs Jubilee General Insurance Limited, including Garnishee proceedings set for hearing on 2nd April, 2025 pending the determination of the preferred Appeal herein.
 3. The costs of this Application be provided for.
2. In supporting the application, Mary Ng'ang'a, the Appellant's Legal Officer, swore a replying affidavit on even date averring that, being aggrieved by the trial court's judgment, the Appellant has preferred an appeal which is competent with appreciable chances of success. Upon consideration of the Appellant's application dated 25/10/2024, the trial court granted interim stay of execution but when the application came up for inter partes hearing on 13/11/2024, the file had mysteriously vanished, hence the stay orders were not extended. The Respondent has successfully obtained a garnishee nisi, and the Appellant is apprehensive that the same shall be made absolute, and unless this court intervenes, the Appellant stands to suffer great prejudice. The Appellant is ready and willing to comply



with the conditions of stay pending appeal including but not limited to depositing the decretal sum in court or in a joint account in the names of counsel for the parties.

3. The Respondent swore a replying affidavit on 28/3/2025 in opposition to the application. He termed the Appellant's allegations that the file went missing as misleading and false, and averred that following the lapse of the interim orders of stay, he lawfully commenced garnishee proceedings through the application dated 11/3/2025. In his view, the issue of stay has already been litigated and determined and allowing the instant application would result in judicial inefficiency and contravene the principles of finality in litigation. He felt that the present application was not only inviting the court to sit on appeal over a decision of the lower court, but was also a blatant abuse of the court process and a clear case of forum shopping in a deliberate attempt to frustrate his enjoyment of the fruits of his judgment.
4. The application was canvassed by way of written submissions which were duly filed by counsel.

Determination

5. I have considered the application, the response thereto, the written submissions by counsel together with the authorities relied on, and I find the issue for determination to be whether the stay of execution should be granted.
6. Order 42 Rule 6 (2) of the Civil Procedure Rules 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."
7. I am guided by the holding of the Court of Appeal in *Butt v Rent Restriction Tribunal* [1979] eKLR that; "It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church* (No 2) 12 Ch D (1879) 454 at p 459."
8. The application was filed on 20/3/2025 while the impugning judgment was delivered on 11/9/2024. Whilst I find that the delay of approximately 6 months is manifestly inordinate, the reason thereof cannot be said to be implausible. The Appellant has been pursuing a plethora of applications in the trial court when the trial court's file at some point purportedly disappeared. When no recourse was forthcoming from the trial court, the Appellant belatedly moved this court through the present application. I thus find that the reason proffered for the evidently unreasonable delay is sufficient and satisfactory.
9. The Appellant contended that it will suffer great prejudice if stay is denied because its preferred appeal will be rendered a mere academic exercise whereas the Respondent maintained that he was intentionally being kept away from enjoying the fruits of his lawful decree.
10. It is trite that execution is a lawful process and it does not in itself amount to substantial loss. In *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR the court (F. Gikonyo J) expressed 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. This is what substantial loss would entail, a question that was aptly discussed in the case of Silverstein N. Chesoni [2002] 1KLR 867, and also in the case of Mukuma V Abuoga quoted above.”

11. On 24/3/2025, the Appellant was granted conditional stay of execution upon deposit of the entire Decretal sum in a joint Advocates’ interest earning account, within 30 days, which order has since been fully complied with.
12. I find that the Appellant’s appeal, which is undoubtedly arguable, will be rendered nugatory if execution proceeds. I further find that no prejudice will be occasioned to the Respondent if stay is granted, in view of the fact that the decretal sum has already been deposited in the Advocates’ joint interest earning account.
13. Consequently, I find that the application dated 20/3/2025 is merited and it is allowed in the following terms;
 1. Stay of execution of the judgment delivered on 11th September, 2024 in Meru CMCC No. E334 of 2022 including the garnishee proceedings is hereby granted pending the hearing and determination of the appeal.
 2. The Appellant to compile, file and serve the Record of Appeal within 45 days from the date hereof, in default of which the stay hereinabove granted shall lapse, and the Respondent shall be at liberty to execute.
 3. Matter b mentioned for further directions on 22/10/2025.

DATED AND DELIVERED AT MERU THIS 10TH JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Ms. Nyaga holding brief for Mr. Kirimi for the Respondent.

Mr. Nyaga holding brief for Mr. Karanja for the Appellant.

