



**Kiromo v Family Bank (K) Limited (Civil Appeal E394 of 2024)  
[2025] KEHC 10319 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10319 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E394 OF 2024  
HM NYAGA, J  
JULY 10, 2025**

**BETWEEN**

**EMARENZIANA WANGARI KIROMO ..... APPELLANT**

**AND**

**FAMILY BANK (K) LIMITED ..... RESPONDENT**

**RULING**

1. The application for determination is dated 13<sup>th</sup> January, 2025, which seeks the following orders:-
  - a. Spent.
  - b. That this Honourable court be pleased to issue orders of stay of execution of the judgment delivered on 18<sup>th</sup> December, 2024 pending the hearing and determination of this application.
  - c. That this Honourable court be pleased to issue orders of stay execution of the Judgment delivered on 18<sup>th</sup> December, 2024 pending the hearing and determination of the appeal.
  - d. That this Honourable court be pleased to issue an order of temporary injunction restraining the respondent either by itself, agents, servants and/or personal representative from advertising and/or putting up for sale and/or selling that parcel of land Known as NAKURU/ MUNICIPALITY BLOCK7/X1 by way of public auction or in other manner pending hearing and determination of this application inter-parties.
  - e. That this honourable court be pleased to issue an order of temporary injunction restraining the respondents either by themselves, agents, servants and/or personal representative from advertising and/or putting up for sale and/or selling that parcel of land known as NAKURU MUNICIPALITY BLOCK 7/X1 by way of public auction or in other manner pending hearing and determination of this appeal.
  - f. That costs of this application be borne by the respondent.



2. The application is supported by the affidavit of the applicant. In a nutshell, she states that Judgment was entered in Meru CMCC No. E285 of 2022, which dismissed her suit with costs. That aggrieved by the said Judgment she has preferred the appeal, which has high chances of success. That the respondent is about to dispose off her property, thus she stands to suffer irreparable injury, thus render the appeal nugatory.
3. That the application has been brought timeously. In response, the respondent filed grounds of opposition and replying affidavit.
4. In a nutshell, it is averred that the orders sought are incapable of being granted as they are not anchored on the plaint filed in lower court, thus form a new cause of action. That there is no looming execution in place.
5. The parties filed submissions which I will not rehash. It suffices to state that I have read the same and will refer to them herein.
6. The applicant had moved the lower court vide a plaint dated 22<sup>nd</sup> September, 2022, in which she sought the following prayers: -
  - a. An order directing the defendant to discharge the charge registered in respect to title No. NAKURU/MUNICIPALITY BLOCK 7/X1.
  - b. A declaration that the 2<sup>nd</sup> charge is null and void.
  - c. An order of general damage.
  - d. Costs of the suit and insert at court rates
  - e. Any other relief this Honorable court, deems fit and just to grant.
7. The gist of the applicant's suit in the lower court was that her deceased husband one Cyrus Kiromo took out a loan facility of Ksh. 200,000/= from the respondent and used her title deed as security. That the respondent refused to release her title, on the ground that the said deceased had taken out an additional loan using the said title. That she never consented to the 2<sup>nd</sup> charge, thus the respondent failed to follow the process when issuing the additional loan(s).
8. In its Judgment delivered on 18<sup>th</sup> December, 2024, the trial court found that the applicant had executed the necessary documents, for all the loan facilities. That there was no evidence that the deceased had settled the loan. It thus proceeded to dismiss the suit with costs.
9. The applicant has come under Order 40 Rules 1, 2, and 3 and Order 42 Rule 6 of the [Civil Procedure Rules](#) which provides as follows:-

Order 40.

Cases in which temporary injunction may be granted

[Order 40, rule 1.]

Where in any suit it is proved by affidavit or otherwise—

  - (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
  - (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court



may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

2. Injunction to restrain breach of contract or other injury

[Order 40, rule 2.]

- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.
- (2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.

Order 42.

Rule 6. Stay in case of appeal [Order 42, rule 6]

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; 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.

10. To succeed in an application for stay of execution, the applicant has to meet the threshold set out, under Order 42 Rule 6 above namely: -Substantial lossApplication is made without delaySecurity
11. I have looked at the Appeal and the prayers sought in the suit in the lower court. I am in agreement with the respondent that what is sought now, an injunction, is an entirely new cause of action that was not sought in the lower court.
12. Further, the lower court dismissed the suit. This is a negative order. Thus, any execution to be done is only for costs of that suit. The court cannot proceed to issue an injunction which was not subject of the suit in the lower court.
13. I am in agreement with the decision in *Benard Njoroge Kibaki t/a Njowa Njemu Enterprises v Equity Bank Limited & Another* (2020)eKLR where it was held as follows:-

“Accordingly, there is nothing to stay in the present case. The trial court in the Judgment dated 30<sup>th</sup> April, 2020 merely dismissed the suit with costs. Therefore, the only execution which can flow from the said Judgment is with respect to cost since the trial court did not order any of the parties to do anything or to refrain from doing anything or to pay any sum. It therefore, follows that in light of the above discussion, this Court has no mandate to grant a Stay Order in the manner prayed for by the Applicant. “



14. There has been no indication that the respondent is about to execute for costs. Thus, the applicant has jumped the gun. Nevertheless, the court is aware that there being an award of costs execution may follow.
15. Therefore, I grant a stay of execution for costs in the lower court pending the determination of the appeal or further orders of the court.
16. On the prayer for injunction, as I have stated, that was not an issue in the lower court. There is therefore no basis to grant an injunction as sought.
17. Even if the court was to consider the prayer for injunction, it would have to consider if there is a prima facie case established as set out in *Giella v Cassman Brown* (1973) EA 358.
18. Having failed to prove her case in the lower court, I am of the view that no prima facie case has been established. The court found that the applicant had signed all the requisite forms for all the loans disbursed to her late husband. There was no evidence adduced to show that the loan was repaid.
19. Having failed to demonstrate a prima facie case, I am of the view that there can be no ground to issue an injunction as sought.
20. In conclusion, I make the following orders:-
  - i. There shall be a stay of execution (for costs) of the decree of the lower court pending hearing and determination of the appeal herein.
  - ii. The applicant to file and serve the record of appeal within 45 days from the date of this ruling and in default, the appeal shall stand dismissed.
  - iii. The prayer for injunction is disallowed.
  - iv. Costs shall abide by the outcome of the appeal.

**DATED, DELIVERED AND SIGNED AT MERU ON THIS 10<sup>TH</sup> DAY OF JULY, 2025**

**HON. H. M. NYAGA**

**JUDGE**

