



REPUBLIC OF KENYA



KENYA LAW
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**Muhoro v Ndiema & another (Civil Appeal E046 of 2024)
[2025] KEHC 10377 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E046 OF 2024**

**M THANDE, J
JULY 18, 2025**

BETWEEN

MICHAEL THUO MUHORO APPELLANT

AND

LILIAN BAHATI BWENGE NDIEMA 1ST RESPONDENT

ARMS NEPANI NITIN BHIKHALAL 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 20.5.24, the Appellant seeks stay of execution pending appeal of the judgement delivered in favour of the Respondents, on 25.3.24 in Kilifi CMCC No. E200 of 2019. The grounds upon which the Application is premised are set out on its face, and in the Appellant's supporting affidavit sworn on even date.
2. The 1st Respondent opposed the application vide a replying affidavit sworn on 19.6.24.
3. The Appellant is aggrieved by the judgement of the trial court and has already filed an appeal against the said decision. In particular, the Appellant is aggrieved by the finding on liability and quantum awarded by the trial court. It is asserted that the appeal has high chances of success and that the Application was filed timeously and without delay. Further that the decretal sum of Kshs. 956,749/= is substantial and if paid and the Appeal is successful, the Respondent a person of straw, will not be able to repay the same thereby rendering the Appeal nugatory. Additionally, that the Respondents will not be prejudiced in any way but that the Appellant will suffer substantial loss and damage if the stay sought is not granted. The Appellant stated that he is willing and able to furnish security by way of a bank guarantee for the decretal sum.
4. The 1st Respondent's reply is that the Application should be dismissed as the Appellant has not annexed the judgment in respect of which stay is sought. Further that judgment on liability was recorded by consent and that the 2nd Respondent had paid his part of the decretal sum. The 1st



Respondent further stated that the Appellant has not met the requirements of Order 42 Rule 6 of the Civil Procedure Rules to warrant the grant of the orders sought. Further that the Appeal was filed out of time without leave.

5. Parties filed their written submissions which I have duly considered.
6. The jurisdiction of the Court to grant stay of execution is set out in Order 42 Rule 6 of the Civil Procedure Rules. Sub-rule 2 provides:
 - (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 order for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
7. A party seeking stay of execution is required to approach the court timeously and to satisfy the court that denial of the orders may result in substantial loss. Such party is also required to offer such security as the court may order for the due performance of the decree or order in respect of which stay of execution is sought.
8. The general rule regarding an order for stay of execution is that first and foremost, it is discretionary. A party seeking stay of execution thus appeals to the discretion of the court.
9. The record shows that this Court granted stay of execution on 27.5.24, on terms that the Appellant would deposit the decretal sum in court within 30 days, and in default, the order lapses. To date, this order has not been complied with.
10. It has been stated time without number that courts do not issue orders in vain. All orders given by a court of competent jurisdiction, are to be obeyed by every party to whom the same are directed. In the case of B v. Attorney General [2004] 1 KLR 431 Ojwang, J. (as he then was) in stated:

The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.
11. Compliance with court orders is central to the rule of law, which is one of the national values and principles of governance under Article 10 of Constitution, which stipulates:
 - (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—
 - (a) applies or interprets this Constitution;
 - (b) enacts, applies or interprets any law; or
 - (c) makes or implements public policy decisions
 - (2) The national values and principles of governance include—
 - (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
 - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;



- (c) good governance, integrity, transparency and accountability; and
- (d) sustainable development.

12. The said national values and principles of governance are binding on all persons. As such, being bound by the rule of law, the Appellant ought to have complied with the order of this Court or being dissatisfied thereby, appealed against it as set out in law. Defiance of the said order is not an option available to him. For the Appellant to now urge that the Court accepts a bank guarantee from a reputable financial institution, having failed to comply with the previous order, is nothing but contemptuous. It is also demonstrative of a party that is unwilling to comply with court orders and seeks comply in a manner that suits him. This Court cannot countenance such abuse of its process.
13. As indicated, an order for stay of execution is first and foremost discretionary. It is an equitable remedy and not a right of a party. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, the Supreme Court stated that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the Court. By parity of reasoning, stay of execution being an equitable remedy may only be granted to a deserving party. The Appellant has by disobedience of the order of 27.5.24 demonstrated that he is not deserving of the orders sought.
14. I accordingly find that the Application dated 20.5.24 is unmerited and the same is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 18TH DAY OF JULY 2025

M. THANDE
JUDGE

