



Muchiri v Mwaringa (Suing as the Administrator and Legal Representative of Goodluck Omar Kadenge) (Civil Suit E314 of 2024) [2025] KEHC 12161 (KLR) (7 July 2025) (Ruling)

Neutral citation: [2025] KEHC 12161 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E314 OF 2024**

F WANGARI, J

JULY 7, 2025

BETWEEN

PETER MUCHIRI APPELLANT

AND

**KADENGE NGOWA MWARINGA (SUING AS THE ADMINISTRATOR
AND LEGAL REPRESENTATIVE OF GOODLUCK OMAR
KADENGE) RESPONDENT**

*(Being an appeal from the Ruling of Hon. J.B. Kalo at the
Mombasa CMCC No. E1168 of 2021 delivered on 13/09/2024)*

RULING

1. This is a Ruling on an Application dated 23/09/2024 seeking for stay of execution of the Ruling of the lower court delivered on 13/09/2024 pending the hearing and determination of this appeal. The Appellant was dissatisfied with the said Ruling has already filed a Memorandum of Appeal dated 20/09/2024.
2. The Application is supported on grounds inter alia that the ex-parte judgment was entered against the Appellant on 11/11/2022 and only came to know of the suit and Judgment when he was served with the Notice to show cause dated 04/03/2024.
3. The Appellant made an application dated 22/03/2024 seeking to have the ex-parte judgment set aside and he be allowed to defend the suit. On 27/03/2024, the application was disallowed and instead, the Trial Magistrate issued warrants of arrests against the Appellant, despite the Appellant having presented himself to the court.
4. The Appellant filed an application dated 02/04/2024 seeking to review the orders dated 27/03/2025. The application was dismissed hence the filing of this appeal. The Appellant stated that the would suffer irreparable damage if the ex-parte judgment is not set aside.



5. The Respondent filed its Replying Affidavit dated 22/10/2024 sworn by the Respondent stating that the application was a delay tactic and meant to deny him the fruits of his judgment. The application is said not meet the threshold for grant of stay orders.
6. The Appellant is said to have failed to demonstrate that his appeal is arguable. The Appellant has also failed to deposit security in satisfaction of the Decree if the appeal was to be unsuccessful. He prayed that the appeal be dismissed with costs.
7. Parties were directed to file written submissions and they both complied by filing their rival submissions in support of their case. The Appellant submitted that he had met the conditions for granting of the stay of execution orders. He stated that the orders sought were to protect him from any form of prejudice and loss.
8. On its part, the Respondent Appellant reiterated the position in the Replying Affidavit that the application had failed to meet the threshold for granting of stay of execution orders and it is just denying the Respondent from enjoying the fruits of the judgment.

Analysis

9. I have analyzed the Application, response and the submissions and authorities filed by the parties in support and opposition to their respective positions. The issues for determination are;
 - a. Whether the Appellant has demonstrated that the order it seeks of stay of execution pending Appeal is merited.
 - b. Who bears the costs
10. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under Order 42 Rule 6(2) of the [Civil Procedure Rules](#) which provides:

“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.
11. Therefore, an Applicant seeking stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2), aforementioned: namely;
 - a. that substantial loss may result to the applicant unless the order is made
 - b. that the application has been made without unreasonable delay, and
 - c. that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given. (See [Antoine Ndiaye v African Virtual University](#) [2015] eKLR).
11. As to what substantial loss is, it was observed in [James Wangalwa & Another v Agnes Naliaka Cheseto](#) [2012] eKLR, that:

“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 ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

11. In the instant case, the Applicants aver that he stands to suffer substantial loss. A warrant of arrest has already been issued against him and risks civil jail if stay of execution is not granted. I find that if the stay orders are not granted, and the Appellant will suffer substantive loss as it will have irreparable effect on the part of the Appellant.
12. The application was brought without delay as it was filed 10 days after the order subject to this appeal was delivered. I find that there was no delay. On security, this court must balance the interests of both parties on record. The Respondent was awarded Kshs. 2,000,000/= in the ex-parte judgment. The same should be deposited as security within the next 45 days after Ruling.
13. On costs, the same shall follow the outcome of the appeal.

Determination

11. In the circumstances, the Application dated 05/12/2024 is allowed on the following terms;
 - a. There be stay of execution of the ex-parte Judgement dated 10/11/2022 pending the hearing and determination of the Appeal.
 - b. That the stay orders are granted on condition that the principal decretal sum of Kshs. 2,000,000/= be deposited in in an escrow account in the names of both counsels on record within the next 45 days.
 - c. In default of (b) above, the stay orders lapse and the Respondent is at liberty to execute.
 - d. Costs of the Application to abide the outcome of the Appeal.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 7TH DAY OF JULY, 2025.

.....

F. WANGARI

JUDGE

In the presence of: -

Mr. Mwenda Advocate for the Appellant

N/A by the Respondent

Ms. Getrude, Court Assistant

