



Nairobi Plastics Limited v Munialo & another (Suing as the Administrators of the Estate of Karano Omoit - Deceased) (Civil Case E773 of 2023) [2025] KEHC 9741 (KLR) (Civ) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9741 (KLR)

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

CIVIL

CIVIL CASE E773 OF 2023

JN MULWA, J

JULY 3, 2025

BETWEEN

NAIROBI PLASTICS LIMITED APPELLANT

AND

CELESTINE MUNIALO & ESTHER AUMA OMOIT (SUING AS THE ADMINISTRATORS OF THE ESTATE OF KARANO OMOIT - DECEASED) RESPONDENT

RULING

1. By the Amended application dated 29/10/2024, the Appellant sought orders of stay of execution of the decree from the judgment of this court delivered on 17/10/2024 (Muteti J) pending the hearing and determination of its appeal initiated by a Notice of Appeal dated 29/10/2024.
2. The application is predicated upon grounds found on its face and supporting affidavit sworn by one Sagar Shah on 29/10/2024 whereof he posits that being dissatisfied with the entire judgment the appellant has instituted an appeal, and has issued a bank guarantee by its bank to secure due performance of the decree and as such, no prejudice or loss to the Respondent should the appeal not be successful.
3. If further avers that a denial of the stay orders will expose the Appellant to substantial loss and will render the appeal nugatory further adding that the Respondent will not be able to repay the decretal sum if paid to them if appeal is successful.
4. The Respondents opposed the application by a Replying Affidavit sworn on 7/02/2025 by one of the Respondents, Celestine Murialo in which she posits that the said application is an abuse of court



process for filing multiple and similar applications, seeking similar reliefs, some which were withdrawn and others compromised leaving the instant application for courts determination.

Further, the Respondents filed grounds of opposition dated 19/11/2024.

5. The Respondents argue that there is no appeal pending or against the judgment delivered on 17/10/2024 and decree of the trial court issued on 11/07/2023; that by dint of a consent order in the trial court, a conditional stay of execution was granted on 26/09/2023 but which the conditions the Applicant failed to obey, therefore, the instant motion is resjudicata.
6. It is a further objection to this court granting the orders sought as to do so would be sitting on appeal over its own orders stating that there is no appeal on record at the Court of Appeal, and adding that the applicant cannot invoke review orders while it claims to have appealed against the same judgment it seeks to be reviewed for set aside orders.
7. It is further deponed to by the Respondents that there is no appeal pending at the Court of Appeal pending any determination as no Memorandum of Appeal has been filed since the judgment of Muteti J. was delivered on 17/10/2024.
8. For the aforesaid, the Respondents urge for dismissal of the application dated 29/10/2024 with costs.

Analysis and Determination

9. Parties Advocates argued their rival cases before the court.

Issue for determination

1. Whether there is a competent appeal on record (at Court of Appeal) upon which stay orders may be granted.
 2. Whether negative orders or judgment may be stayed
10. At the center of the instant motion is the judgment of the court (Muteti J) dated 17/10/2024. A Notice of Appeal to the Court of Appeal dated 29/10/2024 is on record and filed on an even date which signifies an intention to appeal against the whole decision of the court (Muteti J) dated 17/10/2024.
 11. A perusal of the judgment shows that at the end the learned judge found the appeal before him to be incompetent in respect of liability and rendered that for that reason, found no reason to consider the issue of quantum, the appeal having been a non-starter by virtue of omission to file the decree from the lower court. The appeal was thus struck out with costs to the Respondents.

Whether there is a competent appeal on record at the Court of Appeal

12. A perusal of the CTS shows no filing of any Memorandum of Appeal at the Court of Appeal. The only Memorandum of Appeal cited by this court is one dated 10/08/2023 from the judgment of the trial court.
13. As held in the cases of Raymond M. Omboga v. Austine Pyan Maranga & Mohamed Yakub & Another. Mrs. Badur Nasa Civil Application NO. Nairobi 285/1999, it is well settled that an application for stay of execution from the lower court cannot be initiated by a Notice of Motion in the absence of a Memorandum of Appeal. In this case from the High Court to the Court of Appeal.

The Applicant has not provided any that may confirm there being an appeal to the Court of Appeal and pending determination thereof. The Notice of Appeal dated 29/10/2024 filed on same date expired 60 days from its date of filing, thus on or about 29/12/2024.



14. Without further interrogation, it is safe to find and hold that there is no appeal pending at the Court of Appeal upon which an order of stay of execution may be granted. This is on grounds that a Notice of Appeal is but an intention by the party filing to lodge the Appeal at the Court of Appeal, which is demonstrated by filing the Memorandum of Appeal, within 60 days of the Notice; unless extended by an order of the court.
15. The Court of Appeal in the case of *Ali vs. Grain Industries Limited* [2024] eKLR that, at paragraph 20; that an Appeal is required to be filed within 60 days of lodging the Notice of Appeal by way of a Memorandum of Appeal.
16. It further rendered that the purpose of service of a Notice of Appeal is to alert the parties being served with the Notice in question to prepare and get ready for the fight in the intended appeal.
17. Further under Rule 33 (1) of the Court of Appeal Rules, it is mandatory that an appeal can only be filed within 30 days of filing of the Notice of Appeal as stated in the case of *Peter Mathenge t/a Imperial Water Services v. Juma (ELRC case)* [2024]eKLR.
18. However, a party may seek leave of the court (at the Court of Appeal) to lodge the appeal out of time.
19. In the instant application, it is evident that no such leave has been sought or granted.
This boils to the fact that there is no appeal filed at the Court of Appeal upon which a stay of execution order may be anchored on.

Whether negative orders or judgment may be stayed

20. The appeal to this court from the trial courts judgment was struck out with costs. As ably submitted by the Respondents, other than payment of costs, the judgment required the Appellant to do nothing. It is a negative order and is incapable of execution save for the costs, and therefore cannot be executed.
21. The Appellant lost nothing, meaning that the Appellants status is that as at the Trial Court’s judgment against it that remains unexecuted whose decree remains at Kshs. 6,527,953.59 plus costs assessed at Kshs. 300,093.75 as at 11/07/2023 and increasing upon further interest and costs.
22. On the matter of negative orders, the Court of Appeal in *Kanwal Sarjit Singh Dhiman v. Kesharji Jirraji Shah* [2008]eKLR held while dismissing an application for stay of execution of a negative order that a negative order is incapable of execution save in respect of costs only.
23. Also Similarly, the court in *Raymond M. Omboga v. Austine Pyan Maranga Kisii HCCA No. 15 of 2010 (Makhadia J as he then was)* that :-

“.....where there is no positive order made in favour of the respondent which is capable of execution, there can be o stay of execution of such order.... that the issue of substantial loss that is he is likely to suffer and or the appeal being rendered nugatory do not arise..... it is trite law that stay of execution pending appeal an only be granted against the order being appealed against, put differently, an order for stay of execution pending appeal cannot be granted if the intended appeal is not against the order sought to be stayed....”
24. It is therefore clear and evident that the judgment of Hon. Muteti J. delivered on 17/10/2024 has not been appealed from and therefore no stay of execution of the judgment be granted in favour of the Applicant herein.



25. It seems to this court that the stay orders sought by the Applicant are against the trial court's judgment, which the Appellant had appealed against as may be seen from the Memorandum of Appeal filed in this court dated 10/08/2023 and therefore not relevant in the instant motion.
26. For the foregoing this court finds no merit whatsoever in the Applicant's application dated 29/10/2024. It is dismissed with costs to the Respondent.
27. On 13/02/2025, interim stay of execution orders pending hearing and determination of this ruling were issued by this court. The motor vehicles that had been impounded during the execution proceedings were released with a rider that the Appellant would not adversely deal with the vehicles pending the ruling. There is in place a bank guarantee securing the decretal sum.
28. In the circumstances, this court having dismissed the application dated 29/10/2024, the orders dated 13/02/2025 and all prior orders in respect of the matter of execution of the decree of the trial court in Milimani CMCC No. E1063/2022 Celestine Munialo & Esther Auma Amoit (suing as the Administrators of the Estate of John Anderson Karano Omoit (deceased) V. Nairobi Plastics Limited) are hereby vacated.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 3RD DAY OF JULY 2025.

JANET MULWA

JUDGE

