



**Skytech Communications Resources Limited v San Valencia Limited (Civil Appeal E837 of 2022) [2025] KEHC 10865 (KLR) (Civ) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10865 (KLR)

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

**CIVIL**

**CIVIL APPEAL E837 OF 2022**

**JN MULWA, J**

**JULY 24, 2025**

**BETWEEN**

**SKYTECH COMMUNICATIONS RESOURCES LIMITED ..... APPELLANT**

**AND**

**SAN VALENCIA LIMITED ..... RESPONDENT**

**RULING**

1. By the Motion dated 17/04/2025 the Respondent who is the Applicant San Valencia Limited sought orders that pending the hearing and determination of this application, this Honourable Court be pleased to direct that the orders of stay of execution granted upon the application dated 17/12/2024, and subsequent orders issued on 21/01/2025 do remain in full force and effect and that pending hearing and determination of the intended appeal, an order of stay of execution be granted.
2. Supporting the motion is the affidavit of Cheryl Odipo, a legal officer at UAP Old Mutual the insurer of the Applicant dated 17/04/2025 and premised on Order 50 Rule 6 & 51 Rule 1 & 8 of the Civil Procedure Rules (CPR) and Section 95, 1A, 1B and 3A of the Civil Procedure Act (CPA).
3. The applicants goods for the application are that the trial courts judgment against it rendered on 31/01/2020 for Kshs. 10,200,000/= in favour of the Appellant was set aside in this appeal by a judgment dated 30/07/2024; and that the applicant has an intention to appeal against, by a Notice of Appeal dated.
4. Further, the Applicant Respondent by motion at the first instance by a certificate of urgency dated 17/01/2025 sought stay orders of execution which interim orders were granted on condition that the applicant deposits a sum of Kshs. 10,000,000 into court as security pending hearing and determination of the application, which orders the Applicant complied with.



5. The Applicant now by this motion dated 17/04/2025 seek an order that the interim stay orders of execution do remain in force pending hearing and determination of the intended appeal.

6. The Respondent/Skytech Communications Resources Limited despite being served with the motion dated 17/04/2025 and the interim court orders issued on 21/01/2025 has not filed any response.

The application therefore stands unopposed.

7. Notably, by this instant motion, the court notes that a Notice of Appeal has been filed, and a sum of Kshs. 10,000,000 deposited in court as security, not to secure the due performance of the decree but for security pending outcome of this application which ruling is scheduled for 24/07/2025.

8. It is very clear to the court that there is no appeal filed to date despite a notice to appeal having been filed. A notice of appeal signifies a party's intention to lodge an appeal, and until such an appeal is filed by a memorandum of appeal, it remains as such as held in the court of appeal case of Abubakar Mobamed Al-Amin V. Firdans Siwa Simo [2018] eKLR.

9. The applicant has asked this court to extend its temporary orders of stay of execution dated 21/01/2025, on the motion dated 17/12/2024. These orders have since been complied with. Notably, the applicant seeks that the orders remain in force up to determination of the application and hearing and determination of the intended appeal, which is yet to be filed.

10. As earlier rendered, no appeal has been filed and no leave to file the intended appeal out of time has been sought from this court in terms of Section 79G of the Civil Procedure Act. To say the least, there is no anchor upon which an order for stay of execution may be granted. See Case of Rosalindi Wanjiku Macharia V. James Kiingati Kimani [2017] eKLR.

11. The court has not been told why it should stay delivery of the ruling on the motion dated 17/12/2024 on 24/07/2024. It is upon the said motion that the orders of 21/01/2025 were issued, and the said orders were to lapse upon determination of the motion on 24/07/2025.

A court must be moved appropriately under relevant legal provisions under the Civil Procedure Rules to vary its orders. The Applicant must comply with such provisions, as the court cannot vary its orders without being so moved and sufficient reasons stated to the court's satisfaction.

12. An order of stay of execution pending hearing and determination of an intended appeal, not yet filed, cannot issue as such orders would have no legs to stand on as held in the cases of Cooperative Bank Housing Co-operative Society V. Julian Karugi Ruchugo [2025] eKLR ; Balonzi Housing Co-operative Society Ltd v. Captain Francis E. K. Hinga [2012]eKLR, and Abubakar Mobamed Al-Amin v. Firdans Siwa Somo[2018] KECA 202 (KLR) wherein the learned judges of the Court of Appeal rendered thus:-

“ 30 --- However, the Learned Judge was correct in holding that in the absence of the appeal there was nothing upon which the stay orders sought under Order 42 of the Civil Procedure Rules could be anchored...”

13. It is therefore evident that a prayer for stay of execution could only be canvassed after the appeal has been filed, in this case, upon leave of court has been granted to file the appeal out of time. See also the case of Rosalindi Wanjiku Macharia v. James Kiingati Kimani Muiruri (deceased) [2017] eKLR.

14. For the foregoing, the prayer for an order of stay of execution pending the yet to be filed appeal is rejected. Consequently, the motion dated 17/04/2025 is dismissed for lack of substance with no orders on costs.

Orders accordingly.



DELIVERED DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY, 2025

.....

JANET MULWA.

JUDGE

