



REPUBLIC OF KENYA



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Scania Credit Solutions (Proprietary) Limited v Godfrey & another (Civil Appeal E028 of 2025) [2025] KEHC 9470 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E028 OF 2025
AN ONGERI, J
JULY 2, 2025**

BETWEEN

SCANIA CREDIT SOLUTIONS (PROPRIETARY) LIMITED APPELLANT

AND

HUMPHREY LOWO GODFREY 1ST RESPONDENT

DREAMLINE EXPRESS LIMITED 2ND RESPONDENT

RULING

1. The application coming for consideration is the one dated 11th April 2025.
2. The application is brought under Sections 1A, 1B, 3A & 63(e) of the *Civil Procedure Act*, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules and Rule 3(2) of the High Court (Practice & Procedure) Rules.
3. The applicant is seeking leave be granted for the hearing of the Appellant/Applicant's Notice of Motion during the vacation of this Honourable Court and for orders that the execution of the Judgment and Decree issued by the Magistrates Court at Voi in Voi CMCC E111 of 2022 delivered on 28th May 2024 and 28th August 2024 respectively be stayed pending the interpartes hearing of this application the appeal.
4. The application is based on the following grounds;
 - i. Unless this application for stay of execution is heard during this Honourable Court's Easter vacation, execution of the impugned decree will take place and the Appellant will be deprived of its right to property which is guaranteed under Article 40 of *the Constitution* as:
 - a. The Appellant/Applicant is only a financier of the bus that was allegedly involved in the accident that was the subject of the proceedings before the trial court and which



said bus was being driven and operated by the 2nd Respondent and/or its driver and/or agent.

- b. The Appellant/Applicant interest in the motor vehicle that is the subject of the proceeding before the trial court was solely as a financier for purposes of securing its interest as a financier interest limited to recovery of monies lent to the 2nd Respondent; and
 - c. The driver of the motor vehicle in question who is alleged to have been negligent was neither an employee nor an authorized agent of the Appellant and consequently the Appellant ought NOT to be held vicariously liable for his actions.
- ii. The 2nd Respondent commenced execution proceedings against the Appellant for the decretal amount of KES 5,867,584.00 plus costs of KES 294,177.50 being a total sum of KES 6,164,261.50 (the decretal sum) on 6th September 2024 in satisfaction of the Judgment of the Voi Magistrates Court delivered on 28th May 2024 in Voi CMCC E111 of 2022 (the Judgment). The Appellant sought to stay the execution and set aside the Judgment through its application before the Magistrate's Court dated 4th October 2024 (the stay and setting aside application before the Magistrate). The stay and setting aside application before the Magistrate was dismissed on 3rd April 2025 (the Ruling).
 - iii. The Appellant now appeals against the Ruling and seeks an opportunity to defend itself in the Magistrate Court proceedings given that interlocutory judgment was entered against the Appellant without being heard or participating in that suit despite only having a limited interest as financier in the vehicle that was the subject of the proceedings before the trial court.
 - iv. Pursuant to Order 42 Rule 6(1) of the Civil Procedure Rules, 2010 (hereinafter the CPR), this court is entitled to grant an order of stay of execution of the Judgment in order to preserve the substratum of the Appellant's appeal. Under those Rules "whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made to consider such application and to make such order thereon as may to it seem just"
 - v. Unless service is excused in the first instance and relief granted as sought, execution will proceed rendering this application otiose. The Appellant will be compelled to pay a substantial sum it is unlikely to recover from the 1st Respondent who is a man of straw having no known means or assets against which the same can be recovered.
 - vi. The subject suit before the Magistrates Court was served upon the Appellant on 29th June 2022 at its business premises at Scania offices, along Mombasa road, Mlolongo. They were received by Elizabeth Wachira, an employee of the Appellant on the same date. However, due to an inadvertent mistake, she failed to bring the plaint and summons to the attention of the Appellant's Legal Department and Directors.
 - vii. The Appellant's procedures and practices are that, upon receipt of court documents such as the plaint and summons in the suit in question, the Appellant's employee is required to scan and forward the same to the Appellant's Legal Department, which is domiciled at its head office in South Africa. The Legal Department then brings the same to the attention of the Appellant's Directors who will instruct an Advocate to enter appearance and defend the suit. However, due to a regretted oversight by the employee in question, she failed to scan and forward the plaint and summons to the Appellant's Legal Department, with the unfortunate result that



the same was never brought to the attention of the Appellant's Director and subsequently the Appellant failed to enter appearance and defend itself in this suit.

- viii. The Appellant's employee's oversight was entirely innocent and was caused by the fact that the Appellant was at the time, joined as a Defendant in number of suits many of which result from road traffic accidents caused by motor vehicles in respect of which the Appellant was a financier but which were owned, possessed and operated by its customers, including the 2nd Respondent. The Appellant was a party in at least 16 suits which were ongoing as of 22nd June 2022. As a result, numerous court documents were from time to time served upon the Appellant which she was responsible for scanning and forwarding to the Appellant's Legal Department based in South Africa. Unfortunately, in doing so she was under the impression that the plaint and summons served on 22nd June 2022 were among the documents which had already been scanned and forwarded to the Appellant's Legal Department. The said plaint and summons therefore fell through the cracks and she mistakenly failed to forward them to the Appellant's Legal Department and Directors.
- ix. From the court record before the Magistrates court, subsequently the 1st Respondent applied for interlocutory judgment against the Appellant which was entered on 18th July 2022. Notice of entry of judgment was however not served upon the Appellant contrary to Order 22 Rule 6 of the CPR.
- x. It came to the Appellant's attention that subsequently final judgement was entered by the Magistrates court on 28th May 2022 for the 1st Respondent jointly and severally against the Appellant.
- xi. The Appellant, upon learning of the final Judgment, promptly filed the stay and setting aside application on 4th October 2024 which was dismissed on 3rd April 2025.
- xii. The Ruling of 3rd April 2025 which is the subject of this appeal was erroneous and bad in law for the reasons set out in the Memorandum of Appeal filed herewith.
- xiii. It is undisputed that the Appellant has a full and arguable defence to the suit before the Magistrates Court given that:
 - a. Its interest in the motor vehicle that is the subject of the proceeding before the trial court was solely as a financier for purposes of securing its interest as a financier interest limited to recovery of monies lent to the 2nd Respondent; and
 - b. The driver of the motor vehicle in question who is alleged to have been negligent was neither an employee nor an authorised agent of the Appellant and consequently the Appellant ought NOT to be held vicariously liable for his actions.
- xiv. The Appellant has now lodged this application for stay of execution pending appeal to preserve the substratum of its appeal before this court. The Appellant has a meritorious defence against the suit before the Magistrates court and only prays for an opportunity for the defence to be heard and determined on its merits.
- xv. There is now an imminent threat of execution. The previously commenced execution process was only held in abeyance by the Magistrate's court stay orders which lapsed on 3rd April 2025 upon delivery of the impugned Ruling. The Appellant is apprehensive that the 1st Respondent will execute against it rendering this appeal nugatory should this court not urgently intervene.



- xvi. The 2nd Respondent has already secured stay order in its favour against the underlying judgment on condition that it deposits half the decretal sum. While the Appellant was not served with nor did it participate in those proceedings, it is aware of public Ruling issued by this Honourable Court in Scania Credit Solutions (Proprietary) Limited Dreamline Express Limited =Versus= Godfrey (Miscellaneous Application E025 of 2024) [2024] KEHC 15742 (KLR) (13 December 2024) (Ruling) published on Kenya Law Reports.
- xvii. The Appellant is willing to abide by a similar condition by depositing half the decretal sum in a joint interest account in the names of the parties' advocates in a reputable bank or any other condition that this Honourable Court may issue for stay orders pending appeal being granted in its favour.
5. The application is supported by the affidavit of Elizabeth Wachira the Financing Representative of the Appellant which is a reiteration of the grounds above.
6. The 1st Respondent filed a Replying Affidavit sworn on 22nd April 2025. They did not wish to file any submissions. They stated as follows in the said affidavit;
- (i) That I am a male adult Kenyan of sound mind and disposition and the 1st Respondent herein thus competent to make and swear this affidavit in reply.
 - (ii) That I have read and understood the contents of the Appellant's application dated 11th April 2025 and the grounds in support and where applicable I have consulted my Advocates in understanding the same and I therefore wish to respond as follows.
 - (iii) That through my Advocates I filed a suit against the Appellant and the 2nd Defendant herein on 26th April 2022 claiming general and special damages after being involved in a road traffic accident.
 - (iv) That summons to enter appearance were physically served upon the Appellant and the 2nd Respondent together with the pleadings filed and both parties acknowledged receipt including the Appellant herein.
 - (v) That the Appellant failed to enter appearance within the prescribed period and interlocutory judgment was consequently entered against them. The suit proceed to full determination with participation from the other parties and judgment was entered on 28th May 2024 in my favour against the Applicant and the 2nd Respondent jointly for Kshs. 4,606,100/= plus costs and interest.
 - (vi) That my Advocates received an application dated 9th September 2024 filed by the Applicant and the 2nd Respondent through their Advocates in the High Court; Voi High Court Misc. Application No. E025 of 2024; Scania Credit Solutions Ltd & Dreamline Express Limited =Versus= Humphrey Lowo Godfrey in which the were seeking to appeal the trial court's judgment out of time.
 - (vii) That I responded to the said application and the Honourable Court proceeded to issue a ruling on 13th December 2024 allowing the application on condition that the Applicants deposit half of the decretal sum in court within 45 days and for the appeal to be filed within 30 days.
 - (viii). That the orders issued by the Honourable Court bound both parties, considering that the application was made for both the Appellant herein and the 2nd Respondent.



- (ix) That the Applicants have never complied with the orders issued by the Honourable Court which orders were conditional and based on timelines, therefore the Appellant herein and the 2nd Respondent are bound to settle the decretal sum awarded by the trial court.
 - (x) That the Appellant herein filed an application in the trial court seeking to reopen the suit with an intention to defend the same which application was declined by the Honourable Court which gave rise to the application herein an appeal has been pursued.
 - (xi) That I am informed by my Advocates which information I believe to be true that the Appellant herein is undeserving of the orders for stay of execution sought for reasons that they are blatantly abusing the court process by failing to comply with the initial court orders issued abandoning the suit and instituting applications with the sole intention of frustrating me from benefiting from the fruits of the judgment issued in my favour.
 - (xii) That I am informed by my Advocates that the doctrine of Res-judicata precludes the Appellants herein from initiating any further proceedings in relation to seeking stay of execution pending prosecution of their appeal as a similar application had been filed on their behalf of the court.
 - (xiii) That I will be greatly prejudiced if the application herein is allowed as I continue to be subjected to further unnecessary litigation by the Appellant and the 2nd Respondent herein which further delays my quest for justice.
 - (xiv) That by the Appellant's own admission they slept on their right to defend the suit despite being served properly therefore the admitted delay ought not be met at my expense.
 - (xv) That the Appellant herein has offered to deposit security equivalent the half of the decretal sum and has referred to the initial court orders which they already failed to comply with considering that the same appeared to have been jointly filed by the Appellant and the 2nd Respondent.
 - (xvi) That I am informed by my Advocates which information I believe to be true that the Appellant ought to demonstrate that they will suffer substantial loss if the orders sought are not granted but the Appellant has not demonstrated the same other than faulting me by alleging that I am a man of straw.
 - (xvii) That having failed to fulfil the conditions set for consideration for issuance of the interim orders for stay of execution in addition to the history of abuse of the court process, I pray that the Honourable Court dismissed the Appellant's application forthwith and awards costs for the same.
7. The 2nd Respondent did not oppose the application dated 11th April 2025 and they filed an affidavit dated 24th May 2025 to that effect.
 8. The Respondents said they did not wish to file any submissions.
 9. The Appellant filed written submissions as follows;
 10. That the appellant is seeking for stay of execution pending appeal as set out under Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules.
 11. That there was no unreasonable delay in filing this application was filed within 11 days of the said ruling.



12. The appellant argued that it risks substantial loss as the 1st respondent has no known means to refund the decretal sum if paid and the appeal succeeds.
13. The appellant said further that he is willing to deposit half of the decretal amount in a joint interest earning account as security.
14. Respondents did not file submissions
15. The sole issue for determination in the application dated 11th April 2025 is whether the Appellant should be granted stay of execution pending appeal.
16. The governing provision is Order 42 Rule 6 which states as follows;-

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

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (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.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.



17. The application dated 11th April 2025 seeks orders for stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules.
18. The Appellant argues that it will suffer substantial loss if the stay is not granted, as the 1st Respondent may not be able to refund the decretal sum should the appeal succeed.
19. The Appellant further contends that the application was filed without unreasonable delay, having been lodged within 11 days of the ruling delivered on 3rd April 2025.
20. Additionally, the Appellant has expressed willingness to deposit half of the decretal sum in a joint interest-earning account as security, aligning with the conditions set in a previous ruling by this court in *Scania Credit Solutions (Proprietary) Limited & Dreamline Express Limited v. Godfrey* [2024] eKLR (Miscellaneous Application E025 of 2024).
21. The 1st Respondent opposed the application, arguing that the Appellant is abusing the court process by failing to comply with earlier court orders and that the doctrine of *res judicata* bars the current application since a similar application had been filed and determined.
22. The 1st Respondent also contends that the Appellant has not demonstrated substantial loss and that the delay in defending the suit was solely due to the Appellant's negligence.
23. The 2nd Respondent, however, has not opposed the application.
24. Under Order 42 Rule 6(2) of the Civil Procedure Rules, the court must be satisfied that the applicant will suffer substantial loss if stay is not granted, that the application has been made without unreasonable delay, and that adequate security has been provided.
25. The principles governing stay of execution pending appeal were elucidated in *Halai & Another v. Thornton & Turpin (1963) Ltd* [1990] KLR 365, where the court emphasized that the purpose of stay is to preserve the subject matter of the appeal and prevent the appeal from being rendered nugatory.
26. In this case, the Appellant has demonstrated that it risks substantial loss, given the 1st Respondent's alleged inability to refund the decretal sum if the appeal succeeds.
27. This aligns with the holding in *James Wangalwa & Another v. Agnes Naliaka Cheseto* [2012] eKLR, where the court stated that the prospect of the decretal sum being irrecoverable constitutes substantial loss.
28. The Appellant's offer to deposit half of the decretal sum as security further mitigates any prejudice to the 1st Respondent, as was similarly ordered in *Scania Credit Solutions (Proprietary) Limited & Dreamline Express Limited v. Godfrey* (*supra*).
29. The 1st Respondent's argument on *res judicata* is unpersuasive, as the current application arises from a fresh ruling (3rd April 2025) dismissing the Appellant's application to set aside the judgment.
30. The doctrine of *res judicata* under Section 7 of the *Civil Procedure Act* does not apply where the cause of action or the issues in dispute are distinct, as held in *Independent Electoral and Boundaries Commission v. Maina Kiai & 5 Others* [2017] eKLR.
31. There was no unreasonable delay in filing this application since it was filed within 11 days of the said ruling.
32. The court in *RWW v. EKW* [2019] eKLR emphasized that delay must be assessed contextually, and in this case, the 11-day period does not constitute undue delay.



33. In balancing the interests of justice, the court must ensure that the Appellant’s right to appeal is not rendered meaningless while also safeguarding the 1st Respondent’s right to the fruits of judgment.
34. The conditions proposed by the Appellant—depositing half of the decretal sum in a joint interest-earning account—are reasonable and in line with precedent.
35. Consequently, the application dated 11th April 2025 is granted on the following terms;
 - i. Execution of the judgment and decree issued by the Magistrates Court at Voi in CMCC E111 of 2022 on 28th May 2024 and 28th August 2024, respectively, is stayed pending the hearing and determination of the appeal.
 - ii. The Appellant shall deposit half of the decretal sum (KES 3,082,130.75) in a joint interest-earning account in the names of the advocates for the parties within 45 days of this ruling.
 - iii. In default of compliance with condition
 - iv. The stay shall automatically lapse.
 - v. Costs of the application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED THIS 2ND JULY, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....for Appellant/Applicant

.....for Respondents

