



Ndonga t/a Efforts Automobiles v Gichigi & another (Land Case Appeal E052 of 2024) [2025] KEELC 3863 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3863 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE APPEAL E052 OF 2024**

**MAO ODENY, J
MAY 15, 2025**

BETWEEN

SALIM NDONGA T/A EFFORTS AUTOMOBILES APPELLANT

AND

CHRISTINE WANGARI GICHIGI 1ST RESPONDENT

LIFEWOOD TRADERS AUCTIONEERS 2ND RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 7th November, 2024 by the Appellant/Applicant seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this appeal, this honourable court be pleased to stay execution of Judgment of Hon. James Wahome Ndegwa delivered on 4th September, 2024 in Nakuru Business Premises And Rent Tribunal Reference No E154 Of 2023, Salim Ndonga t/a Efforts Automobiles versus Christine Wangari Gichigi & Another and/or any other orders issued therein and/or incidental therefrom.
 - d. That the costs of this Application be awarded to the Applicant.
2. The application was supported by the annexed affidavit of Salim Ndonga sworn on 7th November, 2024 where he deponed that this appeal emanates from a rent arrears dispute between the 1st Respondent instructing the 2nd Respondent to proclaim some vehicles in his care to levy distress for rent. He further deponed that he approached the Tribunal, which delivered its judgment on 4th September, 2024 in favour of the Respondent.



3. It was his deposition that unless this Honourable court intervenes, his business reputation shall be damaged if the vehicles proclaimed are sold or if any other vehicles belonging to third parties under his care are attached in execution. He stated that he is willing to abide by any conditions set by this Honourable court.
4. The 1st Respondent, Christine Wangari Gachigi, filed a Replying Affidavit sworn on 6th December, 2024 and deponed that on 22nd November, 2022, the Applicant admitted owing rent of Kshs 600,000/= and despite various orders and directions by the tribunal, he has refused to pay the undisputed rent arrears in full.
5. She further deponed that the Applicant owes her Ksh 1,755,200/= in rent arrears and that he has not offered any security for the due performance of the judgment of the Tribunal or deposed that he is ready and willing to furnish the same in the event the orders he has prayed for are granted. She deponed that the Applicant has not established sufficient cause for the grant of the order of stay of execution prayed for.
6. The Applicant, Salim Ndonga filed a Supplementary Affidavit sworn on 3rd January, 2025 where he deponed that from the sum of Kshs 600,000/= that accumulated for the two years, he has managed to pay Ksh 150,000/= with a balance of Ksh 450,000/= that he is willing to deposit by instalments as this appeal is ongoing however any other sum beyond that is disputed.

Appellant/applicant's Submissions

7. Counsel for the Appellant/Applicant filed submissions dated 3rd January, 2024 and identified the issues for determination as: Whether the Applicant has reached the threshold for the grant of an order of stay of execution and who should pay the costs. On substantial loss, counsel submitted that the Appellant/Applicant has operated a car bazaar in the subject property for more than 10 years and it is the Applicant's main source of livelihood. Counsel submitted that the Applicant's source of livelihood may be cut short in the event the Respondent attaches the property belonging to third parties exposing the Applicant to legal disputes and damaging his reputation. Counsel relied on the cases of HGE v SM [2020] eKLR and Butt v Rent Restriction Tribunal [1979].
8. On the limb of a balance of convenience, counsel submitted that in the event the appeal is unsuccessful, the property owner shall execute against the Appellant since she knows exactly where to find him. Counsel submitted that when this court allows orders of stay pending appeal, no prejudice shall befall the Respondents and cited the case of RWW v EKW [2019] eKLR.
9. Counsel further submitted that the appeal is meritorious and should be heard to its conclusion citing the case of Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR. Counsel submitted that this application was filed without unreasonable delay as judgment was delivered on 4th September, 2024 and the Applicant filed his application on 7th November, 2024 as soon as he was provided with a copy of the judgment.
10. On security for performance of the decree, counsel submitted that the Applicant is willing to deposit the sum of Kshs 450,000/= in instalments as this appeal is ongoing however any other sum beyond that is disputed therefore this Honourable court can grant the repayment in instalments as a condition for the grant of stay of execution. Counsel submitted that in the alternative, the Applicant is willing to deposit security in the form of his parcel of land which shall be of equal or greater value to the decretal amount for the due performance of the decree in the unlikely event that this appeal does not go in his favour. Counsel relied on the case of Gianfranco Manenthi & Another v Africa Merchant Assurance Co. Ltd [2019] eKLR.



Respondents Submissions

11. Counsel for the Respondents filed submissions dated 3rd February, 2025 and identified the issue for determination as to whether execution of the judgment of the Tribunal should be stayed pending the hearing and determination of the appeal herein.
12. Counsel relied on Order 42 Rule 6 (2) of the Civil Procedure Rules and the cases of Jamii Bora Bank Limited & another v Samuel Wambugu Ndirangu and Butt v Rent Restriction Tribunal [1979] and submitted that a perusal of the application reveals that there is no averment in the supporting affidavit that the applicant will suffer substantial loss. Counsel also cited the cases of Shell Ltd v Kibiru and Another [1986] KLR 410 and Jessikay Enterprises Ltd v George Kahoto Muiruri [2022] eKLR.
13. On whether the application has been made without inordinate delay, counsel submitted that the judgment of the Tribunal was delivered on 4th September, 2024 and the Applicant brought the instant application in November, 2024 therefore the application was brought timeously.
14. On whether the Applicant has furnished security, counsel submitted that no security of whatever form has been furnished and relied on the cases of John Kamau Waweru v Joseph Muriu Waithaka [2017] eKLR and Mary Mwaki Masinde v County Government of Vihiga & 2 others [2015] eKLR. Counsel submitted that the application is unmeritorious and prayed that it be dismissed with costs.

Analysis And Determination

15. The issue for determination is whether this court should grant the applicant a stay of execution order as sought in the Notice of Motion application dated 7th November, 2024. The legal framework for granting stay of execution is provided for under Order 42 Rule 6 of the Civil Procedure Rules which states:
 - “(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.”
16. On whether the application was filed without unreasonable delay, the judgment was delivered on 4th September, 2024 and the Notice of Motion Application under consideration is dated 7th November, 2024 which shows that it was brought without undue delay and the same has also been confirmed by the Respondent.
17. In the case of Jaber Mohsen Ali & another v Priscillah Boit & another [2014] the court held as follows:

“The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”
18. On the issue of substantial loss, the Applicant submitted that he has operated a car bazaar in the subject property for more than 10 years and it is his main source of livelihood. The Applicant contends that his source of livelihood may be cut short in the event the Respondent attaches the property belonging to third parties exposing him to legal disputes and damaging his reputation. This may not sit well as



proof of substantial loss as the Respondent may also state that the rent arrears demanded is a source of her livelihood.

19. In the case of Wambua (Suing as the Personal Representative of the Estate of Samuel Muindi) & another v Katheka Kai Farmers Co-operative Society Ltd & 2 others [2025] KEELC 1476 (KLR), the court stated as follows at paragraph 18:

“The purpose of a stay of execution is to preserve the substratum of the case so that the rights of the appellants, who are exercising their undoubted right of appeal, are safeguarded and the appeal, if successful, is not rendered nugatory.”

20. In the case of Malili Ranch Co Limited v Katilu (Suing as the person representative of the Estate John Kangwalla Katilu) & another [2025] KEELC 1384 (KLR), the court pronounced as follows at paragraph 10:

“.....Demonstration of substantial loss is the cornerstone of any grant of stay of execution pending appeal....”

21. On security for the due performance of the decree, the Applicant informed court that he is willing to deposit the sum of Kshs 450,000/= in instalments as this appeal is ongoing. The Applicant also informed court that alternatively, he is willing to deposit security in the form of his parcel of land which shall be equal or more value to the decretal amount for the due performance of the decree in the unlikely event that this appeal does not go in his favour.

22. In the case of Exclusive Mines Limited & another v Ministry of Mining & 2 others [2015] eKLR, the court stated as follows:

“...On the issue of furnishing security, my understanding is that an applicant seeking an order of stay pending appeal should, as a sign of good faith, offer or propose any such security for the performance of the decree which the appeal has been preferred. I have looked at the Interested party’s affidavit in support of his Notice of Motion and nowhere in his seventeen (17) paragraph affidavit does he make any offer of any security nor bind himself to meet any such orders that the Court may impose. While the law leaves it to the Court’s discretion to make such orders as to security as it may deem fit, it is a good practice for an applicant seeking such an order to intimate to the Court his preparation to meet such orders as the Court may impose as this assists the Court while exercising its discretion in that respect.”

23. The Applicant cannot have his cake and eat it. The Respondent is also entitled to the fruits of her judgment, therefore there has to be a middle ground where both parties benefit from the seat of justice. This is a case where from the tone of the pleadings, and submissions, the parties can agree on some form of settlement.

24. In the interest of justice, I hereby grant a conditional stay of execution and order that the Applicant deposit Kshs. 450,000/ (Four Hundred and Fifty Thousand Only) in a joint interest earning account of the advocates on record within 40 days failure to which the stay lapses. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

