



**Topsuit Apparel Limited & another v Lenkaiyo (Civil Appeal
E012 of 2024) [2024] KEHC 5720 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5720 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E012 OF 2024**

**F GIKONYO, J
MAY 21, 2024**

BETWEEN

TOPSUIT APPAREL LIMITED 1ST APPLICANT

JARED NYAMERI 2ND APPLICANT

AND

DAVID KONANA LENKAIYO RESPONDENT

*(Being an Appeal against the Orders/Directions issued by Hon. Daniel
Nyayo given on 15th February, 2024 in NAROK SUCC. NO. E021 OF 2023)*

RULING

Stay of execution pending appeal

1. By a Notice of motion dated 11th march, 2024, the appellant is seeking a stay of execution pending the hearing of this appeal.
2. The major reason advanced is that there is imminent danger of execution of the judgment of the small claims court which will render their appeal nugatory as the respondent is not in a position to refund the sum if paid over. According to the appellant, the appeal has high chances of success as it relates to denial of opportunity to be heard.
3. On 9th April, 2024, the court granted a temporary stay of execution on condition that the applicant deposited the entire decretal sum in an interest earning account in the joint names of legal counsel for the parties herein within 30 days thereof.
4. The applicant averred in the application that he is ready, able and willing to abide by any conditions or provide any security as the court may determine.



5. In the circumstances of this case, the interim stay of execution and the terms issued earlier is sufficient security for purposes of stay of execution pending appeal as it secures the decree and prevents any substantial loss from occurring.
6. Accordingly, the court orders a stay of execution pending the hearing of this appeal on condition that the applicants deposit the entire decretal sum in an interest earning account in the joint names of legal counsel for the parties herein within 30 days of today. If they have deposited the decretal sum, the deposited funds constitute security ordered herein. Orders made under order 42 rule 6 of the [Civil Procedure Rules](#).
7. In the event of default, the stay will automatically lapse without any necessity to apply.
8. Orders accordingly.
9. Date for ruling was taken in the presence of both legal counsel for the parties.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS ONLINE APPLICATION
THIS 21ST DAY OF MAY, 2024.**

**F. GIKONYO M
JUDGE**

In the presence of
N/A for appellant
N/A for respondent
Mr. Otolu - C/A

