



**Maroo v Mutisyia (Miscellaneous Civil Application  
E006 of 2024) [2024] KEHC 7074 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7074 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CIVIL APPLICATION E006 OF 2024**

**TW CHERERE, J**

**JUNE 6, 2024**

**BETWEEN**

**JEREMIAH MUNGANIA MAROO ..... APPLICANT**

**AND**

**JOELRUM MUTISYIA ..... RESPONDENT**

**RULING**

1. On 17<sup>th</sup> October 2023, Judgment was entered in Meru SCC No. E266 OF 2023 for the Respondent as against the Applicant for the sum of KES. 251,200/- plus costs and interest.
2. By application dated 15<sup>th</sup> January, 2024 and filed on 16<sup>th</sup> January, 2024, supported by an affidavit sworn by Jeremiah Mungania Maroo (Applicant) he seeks stay of execution of the judgment pending filing of an intended appeal on both quantum and liability, leave to appeal out of time and stay of proceedings in declaratory suit Meru SCC No. E373 OF 2023 that Respondent has filed against the Applicant's insurer Directline Assurance Co.Ltd.
3. Applicant avers that his insurer is willing to offer a bank guarantee as security for due performance of the judgment.
4. Joelrum Mutisyia (Respondent) opposed the application vide a replying affidavit sworn on 25<sup>th</sup> March, 2024 on the grounds that the delay in filing the appeal has not been explained and substantial loss has not been demonstrated. In the event that application is allowed, Respondent prays that the total decretal sum be deposited in an interest earning account in the name of both advocates.
5. I have considered the application in light of affidavits on record and the issue for determination is whether a case has been made for an order of leave to file an appeal out of time and stay of execution of judgment dated 17<sup>th</sup> October 2023 pending hearing and determination of the intended appeal and stay of proceedings in Meru SCC No. E373 of 2023.



6. Order 42 (6) of the Civil Procedure Rules provides that no order for stay of execution shall be made unless application has been made without unreasonable delay; substantial loss is demonstrated and security for the due performance of such decree or order is offered. (See *Endmor Steel Millers Ltd vs James Wakbulunya Makuto* [2016] eKLR).
7. The impugned judgment was delivered on judgment on 17<sup>th</sup> October 2023, this application was filed on 17<sup>th</sup> January, 2024 exactly 3 months from the date of the impugned judgment.
8. Applicant does not explain the delay in filing the appeal and appears to have moved the court only after the Respondent filed a declaratory suit to enforce the judgment against Appellant's insurer.
9. Concerning substantial loss, there is a myriad of cases among them *Standard Assurance Co. Ltd v Alfred Mumea Komu* [2008] eKLR where the Court stated-

“Substantial loss, in its various forms is the corner stone of best jurisdictions for granting a stay. That is what has to be presented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.”

10. Respondent has not responded to the Applicant's contention that he is not in a position to refund the decretal sum in the event the appeal succeeds.
11. From the foregoing, I find that Applicant has thus demonstrated that he is likely to suffer substantial loss if an order of stay is not granted.
12. The record demonstrates that Applicant has to date not deposited the sum of KES. 100,000/- security for due performance of the judgment which he was ordered to deposit on 17<sup>th</sup> January, 2024.
13. Concerning stay of proceedings in the declaratory suit, the general principle governing the grant of stay of proceedings was elucidated by Ringera J. (as he then was), *In Re: Global Tours and Travels Ltd* NRB HC Winding Up Cause No. 43 of 2006 (UR) cited in *Kenya Wildlife Service v James Mutembei* MRU HCCA No. 40 of 2018 [2019] eKLR as follows:

As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

14. From the foregoing analysis, the notice of motion dated 15<sup>th</sup> January, 2024 and filed on 16<sup>th</sup> January, 2024 is determined in the following terms;
  1. Leave is granted to appeal the judgment and decree in Meru SCC No. E266 OF 2023
  2. An order of stay of execution of judgment and decree in Meru SCC No. E266 of 2023 is granted pending the hearing and determination of the intended appeal on condition that Applicant deposits the total decretal sum as security for due performance of the judgment



3. Upon deposit of the total decretal sum, proceedings in Meru SCC No. E373 OF 2023 shall stand stayed pending the hearing and determination of the intended appeal
4. The intended appeal shall be filed in the next 45 days
5. Costs shall be costs in the appeal

**DELIVERED IN MERU THIS 06<sup>TH</sup> DAY OF JUNE 2024**

**TW. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Kinoti

For Applicant - Mr. Adagala for Kimondo & Gachoka & Co. Advocates

For Respondent - Mrs. Ntarangwi for Hiram Kirimi & Co. Advocates

