



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muhzin Express Limited v Baya (Civil Appeal E002 of 2023)  
[2024] KEHC 8672 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8672 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL E002 OF 2023**

**M THANDE, J  
JULY 19, 2024**

**BETWEEN**

**MUHZIN EXPRESS LIMITED ..... APPELLANT**

**AND**

**WILFRED THOYA BAYA ..... RESPONDENT**

**RULING**

1. The Appellant has moved this Court vide an Application dated 28.7.23, seeking stay of execution of the judgement delivered in favour of the Respondent, on 28.11.22 in Malindi CMCC No. 375 of 2021, pending hearing and determination of the application dated 27.2.23. They also seek a recall of Proclamation by Interfield Auctioneers, warrant of attachment of property and warrant of sale of property all dated 18.7.23. The grounds upon which the Application is premised are set out in the Application and in the undated supporting affidavit of Abdirahma Badai.
2. The background of this matter as can be gleaned from the record is that the Respondent filed a plaint in the lower court against the Appellant, seeking damages for injuries sustained in a road accident, the cause of which he attributed to the Appellant's driver's negligence. After the hearing, the trial Court found the Appellant 100% liable and awarded the Respondent the sum of Kshs. 1,310,050/= in general damages, costs and interest. Being dissatisfied with the decision of the trial court, the Appellant filed the appeal herein challenging the decision of the trial court. The Appellant also filed an application dated 27.2.24, seeking stay of execution of the orders of the trial court, which was granted on the same date. On 11.5.23, directions were given for the filing of written submissions within 14 days. On application by the Respondent's advocate, the Court directed the Appellant to, within 21 days, deposit in Court, the sum of Kshs. 4,000,000/= as security in this matter as well as in HCCC Nos. 2/2023; 3/2023; 5/2023; 17/2023 and 20/2023 which are all related. The matter was to be mentioned on 16.10.23.
3. It is the Appellant's case that the Respondent proceeded to issue proclamation notices and warrants of attachment in respect of motor vehicles KXL 046D, KCH 796T and KDA 130H, knowing full



well that the application in question was pending before Court. The Appellant is apprehensive that if the orders sought are not granted, the Respondent may execute thereby occasioning the Appellant irreparable loss and damage. Further that the decretal amount if paid to the Respondent may not be recovered. Additionally, that the Application was brought without unreasonable delay and that the Respondent will suffer no prejudice should stay be granted.

4. The Respondent opposed the application vide a replying affidavit sworn on 11.8.23 by his counsel, Geoffrey Kilonzo. It is the Respondent's case that the Application is an afterthought, bad in law, incompetent, res judicata, a tactic for forum shopping, a blatant abuse of the court process, is meant to deny the Respondent the fruit of litigation and is an abuse of the court process, is brought in bad faith and is overtaken by events. Further that the Court directed the Appellant to deposit the sum of KShs. 4,000,000/= within 21 days and in default, the stay order would automatically lapse and the Respondent would be at liberty to execute. It was added that the warrants of attachment and sale were issued on 18.7.23 following default by the Appellant. Further that the alleged pending application is intended to buy time and block the Respondent from enjoying the fruits of his judgment.
5. Parties filed their written submissions which I have duly considered.
6. The general rule regarding an order for stay of execution is that first and foremost, it is discretionary. A party seeking stay of execution thus appeals to the discretion of the court.
7. Order 42 Rule 6 of the [Civil Procedure Rules](#). Sub-rule 2 provides:
  - (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 order for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
8. A party seeking stay of execution is required to approach the court timeously and to satisfy the court that denial of the orders may result in substantial loss. Such party is also required to offer such security as the court may order for the due performance of the decree or order in respect of which stay of execution is sought.
9. The record herein shows that this Court granted stay of execution on 27.2.23, pending the hearing and determination of the Appellant's application of even date, or further orders to the contrary. On 11.5.23, the Court directed the Appellant to file submissions within 14 days. Additionally, the Appellant was directed to, within 21 days, deposit in Court the sum of KShs. 4,000,000/= as security in this and 5 other related matters. To date, this order has not been complied with. Submissions have not been filed nor has the security been deposited in Court.
10. The Appellant has in submissions tried to make a case for deposit of a bank guarantee as security, arguing that the same is a stable and healthy mode of securing the decretal sums which balances the interest of both parties herein. The Appellant asserted that it will comply immediately should such an order be made.



11. It has been stated time without number that courts do not issue orders in vain. All orders given by a court of competent jurisdiction, are to be obeyed by every party to whom the same are directed. In the case of *B v Attorney General* [2004] 1 KLR 431 Ojwang, J. (as he then was) in stated:

The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.

12. Compliance with court orders is central to the rule of law, which is one of the national values and principles of governance under Article 10 of *the Constitution*, which stipulates:

- (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—
  - (a) applies or interprets this Constitution;
  - (b) enacts, applies or interprets any law; or
  - (c) makes or implements public policy decisions
- (2) The national values and principles of governance include—
  - (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
  - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
  - (c) good governance, integrity, transparency and accountability; and
  - (d) sustainable development.

13. The said national values and principles of governance are binding on all persons. As such, being bound by the rule of law, the Appellant ought to have complied with the order of this Court or being dissatisfied thereby, appealed against it as set out in law. Defiance of the said order is not an option available to it. For the Appellant to now urge that the Court accepts a bank guarantee having failed to comply with the previous order, is nothing but contemptuous. It is also demonstrative of a party that is unwilling to comply with court orders and seeks comply in a manner that suits it. This Court cannot countenance such abuse of its process.

14. As indicated, an order for stay of execution is first and foremost discretionary. It is an equitable remedy and not a right of a party. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, the Supreme Court stated that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the Court. By parity of reasoning, stay of execution being an equitable remedy may only be granted to a deserving party. The Appellant has by disobedience of the order of 11.5.23 demonstrated that it is not deserving of the orders sought.

15. I accordingly find that the Application 28.7.23, is unmerited and the same is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 19<sup>TH</sup> DAY OF JULY 2024**

**M. THANDE**



**JUDGE**

