



**Korir v Stanbic Bank Kenya Limited & another (Civil Appeal E211 of 2024)
[2024] KEHC 12219 (KLR) (Civ) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E211 OF 2024

JN MULWA, J

OCTOBER 15, 2024

BETWEEN

GLADYS JERUTO KORIR APPELLANT

AND

STANBIC BANK KENYA LIMITED 1ST RESPONDENT

GILBERT RONO 2ND RESPONDENT

RULING

1. By an Application dated 21/03/2024 the Applicant sought orders of stay of execution of judgment in SCCOMM 4202 of 2023 delivered on 1/2/2024 pending hearing and determination of the application and Appeal filed therefrom, on grounds stated at its face and Supporting Affidavit sworn on even dates by the Applicant/Appellant.
2. The Application is further grounded on provisions of Order 50 Rule 6 and Order 41 Rule 4 of the Civil Procedure Rules underpinning enlargement of time.
3. The application is opposed by grounds of opposition dated 9/05/2024 filed by the 1st Respondent Stanbic Bank Kenya Limited.
4. The court has considered the parties pleadings, the impugned judgment and submissions.
5. It is the applicant's contention that the decretal sum of Kshs. 342,837.92 was awarded unjustly for reasons that the subject motor vehicle was purchased validly being the subject of the appeal that was reinstated to the 2nd Respondent and therefore should stay be granted, she would suffer substantial loss. No substantiation of the loss has been demonstrated.



6. The 1st Respondent's case is that the delay for about one month to bring this instant application has not been explained.

7. The court has considered the parties pleadings, affidavits in support of the grounds of objection and submissions.

The impugned judgment delivered on 1/02/2024. By the said judgment, the subject motor vehicle Registration No. KCR 749G was re-instated to the 2nd Respondent Gilbert Rono. In addition the trial court entered infavour of the 2nd Respondent ,Gilbert Rono, the claimant in the sum of Kshs. 342,837.92/= in favour of the claimant against the 1st Respondent is Stanbic Bank Kenya Limited.

8. As at the date of this application (21/03/2024) the subject motor vehicle KCR 759G was in the possession of the Applicant Gladys Jeruto Korir. She seeks an order of status quo to be maintained pending hearing of the application interpartes, which interim order was granted by the court in the first instant.

9. It is noted that the Appeal herein by Memorandum of Appeal dated 12/02/2024 was filed within the statutory period as provided.

10. I am persuaded also that this application was filed without unreasonable delay as provided under Order 42 Rule 6(2) of the Civil Procedure Rules.

11. On the matter of substantial loss being the cornerstone of an application for stay of execution pending appeal under Order 42 Rule 6 the applicant has urged the court to grant stay orders citing several superior court decisions among them– Kenya Shell Ltd V Benjamin Karuda Kibiru & Others 1982 -88) IKAR 1018; James Wangalwa & Another v. Agnes Naliaka Cheseto [2012] eKLR for the proposition that evidence of substantial loss must be demonstrated and that lawful execution put in place does not translate to substantial loss. At the James Wangalwa case (supra) the court added that execution is a lawful process, hence the applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the application as the successful party in the Appeal.

12. Therefore an order of stay of execution pending appeal shall only be granted when the applicant has successfully persuaded the court that it will suffer substantial loss if the order is denied, including the nature of loss being demonstrated to the court.

13. The Applicant has possession of the subject motor vehicle. Depositing the logbook into court as security will not be sufficient security in the court's opinion as it cannot sufficiently secure and safeguard the Respondents interests in the physical the vehicle.

Security must be one that should achieve due performance of the decree which at the end includes costs and interest on the judgment sum.

14. The judgment sum herein is Kshs. 342,837.92 plus costs and interest at 15% pa. as stated in the decretal, until payment in full.

15. Upon consideration of both parties interests the following orders shall issue.

16. The application dated 21/03/2024 is allowed subject to:

a. The Applicant depositing in an interest earning account in the joint names of both Advocates for the parties Kshs. 350,000/= within 30 days of this order. In default the stay shall lapse automatically.



- b. That the subject motor vehicle registration No. KCR 759G shall remain in possession of the Applicant Gladys Jerubo Korir with a further order that the said vehicle shall not be sold or part possession of the Applicant during the pendency of the appeal.
- c. That the Record of Appeal shall be filed and served within 60 days, with a mention for further directions on 21/01/2025.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF OCTOBER 2024.

JANET MULWA

JUDGE

