



REPUBLIC OF KENYA



**KENYA LAW**  
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**Andrew v Nakhulo & another (Civil Appeal E013 of 2023)  
[2023] KEHC 18484 (KLR) (17 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 18484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E013 OF 2023  
REA OUGO, J  
MARCH 17, 2023**

**BETWEEN**

**FRANCIS OJIAMBO ANDREW ..... APPELLANT**

**AND**

**ERNEST ODHIAMBO NAKHULO ..... 1<sup>ST</sup> RESPONDENT**

**WESA ONYANGO JOSEPH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant in this matter was committed to civil jail on the February 23, 2023 for a decretal amount owing in CMCC No. 320/2017. He was committed for 30 days. After this committal he has filed a motion before this court seeking a stay of execution of the Ruling orders and all consequential proceedings conducted on the February 23, 2023 in the said suit pending the hearing of the appeal. He also seeks that he be released from prison unconditionally pending the hearing and determination of the application /appeal.
2. In his supporting affidavit he doesn't deny the debt. He claims that he has execution orders against his insurer to execute a judgment against them. He also claims that he wasn't served with the notice to show cause before being committed.
3. The respondent gave a detailed background of the proceedings between the parties in the lower court in CMCC 320/2017. The respondent's response simply is that the applicant/appellant owes the decretal sum and that he was given a chance to respond to the notice to show cause after he was served with the notice to show cause. That after he failed to persuade the court he was committed to civil jail. The respondent has also raised the issue that the applicant didn't seek the lower courts leave to appeal before the High Court.
4. Parties filed written submission which I have read and considered. I have also considered their rival affidavits and the law.



5. The gist of the application is that the applicant seeks to be granted a stay of execution of the orders of February 23, 2023 and to be released from civil Jail unconditionally.
6. The provisions for stay of execution are provided under Order 42 rule 6 of the [Civil Procedure Rules](#). On the first limb the application was brought within a reasonable time.
7. The 2<sup>nd</sup> limb is for the applicant to demonstrate that he will suffer substantial loss. The applicant argues that he has an arguable appeal in that he wasn't served with the Notice to show cause. This is an arguable issue. The respondent argues that the summons has been pending since 2019. To grant an unconditional release order in the matter would be allowing the appeal at this interlocutory stage. I am of the view that there is need for security of costs. I will therefore grant a conditional stay order so as to enable the parties argue the appeal that has been filed.
8. A stay of execution of the Ruling dated February 23, 2023 to issue on condition that the applicant deposits half the decretal sum in court within 30 days from the date of this Ruling in default the orders shall vacate. That means he can only be released on deposit of the said sum.
9. The appellant shall prepare his record of appeal and serve on the respondent within the said 30 days. Mention after 30 days for directions on the appeal. The issue of the competence of the appeal can be taken up at the time of admission of the appeal. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT BUNGOMA THIS 17<sup>TH</sup> DAY OF MARCH, 2023.**

**R. E. OUGO**

**JUDGE**

**In the presence of:**

Mr. Makori: For the Applicant

Mr. Were holding brief Mr. Bwonchiri for the Respondent

Paul: C/A

