



**Otieno & another v Ethics & Anti-Corruption Commission (Anti-Corruption and Economic Crimes Civil Suit 4 of 2018) [2023] KEHC 3320 (KLR)
(Anti-Corruption and Economic Crimes) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3320 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT 4 OF 2018**

EN MAINA, J

APRIL 20, 2023

BETWEEN

BOB KEPHAS OTIENO 1ST APPLICANT

EVELINE AWINO OGUTU T/A NYANGUME ENTERPRISE ... 2ND APPLICANT

AND

ETHICS & ANTI-CORRUPTION COMMISSION RESPONDENT

RULING

1. Before me is the Notice of Motion dated March 6, 2023 by which the Defendants/Applicants are seeking a stay of execution of the judgement delivered herein by this court on March 2, 2023 together with all consequential orders thereto.
2. The gist of the application is that the Defendants/Applicants being aggrieved have preferred an appeal against the whole of that judgment. A Notice of Appeal lodged in this court on March 7, 2023 is annexed.
3. The application is opposed on grounds that firstly the Notice of Appeal lodged on March 7, 2023 was not served upon the Respondent and secondly that the main ground of appeal does not disclose 'a prima facie case on appeal' and is 'a delaying tactic meant to prevent the Respondent herein from realizing the fruits of its judgement.' It is also contended that no steps to file the appeal have been taken and further that the Applicants have not demonstrated that they will suffer irreparable harm or loss if the stay is not granted. It is also stated that execution has not commenced.
4. Learned Counsel for the parties canvassed the application through written submissions which I have fully considered.



5. Order 42 Rule 6 (1) of the [Civil Procedure Rules](#) vests this court with discretion to grant an order for stay of execution pending appeal. Order 42 Rule 6(2) sets out the conditions upon which such an order ought to be granted and there is a long line of cases setting out the principles which guide the court in considering whether or not to grant the order.
6. The Notice of Appeal lodged in this court is proof of the intended appeal and it suffices for the purposes of this application. I am also persuaded that the Applicants have satisfied the conditions in sub rule 2 (a) of the Rule 6 in that this application was made without delay and that the applicants are likely to suffer substantial loss given that should this application be refused the decretal sum may have dissipated by the time the appeal is heard. The issue of whether the appeal is likely to succeed or not or is however best left to the appellate court.
7. Rule 6 (2) (b) requires that security for the due performance of such decree or order as may ultimately be binding on the Applicants be given before the order for stay is granted and accordingly an order for stay of execution pending appeal shall issue but only on condition that the entire decretal sum is deposited either in this court or in an interest earning account in the joint names of Counsel for the parties within thirty (30) days of this ruling.
8. The costs of the application shall be borne by the Applicants.
9. Orders accordingly.

SIGNED, DATED, AND DELIVERED VIRTUALLY THIS 20TH DAY OF APRIL 2023.

E.N. MAINA

JUDGE

