



REPUBLIC OF KENYA



**Shiundu & another v Nyaoro (Civil Appeal E642 of 2022)  
[2023] KEHC 3903 (KLR) (Civ) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3903 (KLR)

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

**CIVIL**

**CIVIL APPEAL E642 OF 2022**

**JN MULWA, J**

**MAY 3, 2023**

**BETWEEN**

**CYNTHIA MUYOTI SHIUNDU ..... 1<sup>ST</sup> APPELLANT**

**FAB GURU HOLDINGS LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ALICE AKINYI OPIYO NYAORO ..... RESPONDENT**

**RULING**

1. Before court is a Chamber Summons dated 19<sup>th</sup> August 2022 brought pursuant to the provisions of the *Judicature Act* Cap 8, The *High Court (Practice and Procedure Rules* (Part 1 rule 3); Order 42 Rule 6 and Order 51 Rules 1 and 3 of the *Civil Procedure Rules* 2010; and Section 1A, 1B & 3A of the *Civil Procedure Act*. The Appellants seek a stay of execution of the Judgment of Hon. J. W. Munene delivered on 21<sup>st</sup> July 2022 in Small Claims Court Case No. E 2422 of 2022 – Alice Akinyi Opiyo v Cynthia Muyoti Shiundu & another pending the hearing and determination of the Appeal. The Applicants also pray that the costs of the Application be provided for.
2. The application is predicated on the grounds set out on its face and supported by the Affidavit of Cynthia Muyoti Shiundu, a Director of the 2<sup>nd</sup> Appellant.
3. The Respondent responded through an Affidavit sworn on 25<sup>th</sup> October 2022.
4. The court has considered the parties respective affidavits in support of and in opposition of the application as well as their respective oral arguments. The only issue is whether the Applicant has satisfied the conditions for the grant of stay of execution pending appeal.



5. The conditions necessary for the grant of stay of execution pending appeal are laid out in Order 42 Rule 6(2) of the Civil Procedure Rules as follows:

“ 6.

(2) No order for stay of execution shall be made under sub-rule (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 orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. In the instant case, the Respondent is agreeable to the grant of stay of execution of the impugned judgment pending appeal on condition that the Appellants provide security for the due performance of the Decree. The Appellants on the other hand have expressed willingness to deposit the sum of Kshs. 850,000/- as security and are willing to abide by any conditions that may be set by this Honourable court.

7. For the foregoing, the court finds that the Appellants application dated 19<sup>th</sup> August 2022 is merited and is allowed in the following terms:

- a. The Appellant shall deposit the sum of Kshs. 850,000/- in an interest earning account in the names of the parties advocates within twenty-one (21) days from the date of this ruling.
- b. In default of (a) above, the stay granted shall automatically lapse.
- c. The costs of the application shall abide the outcome of the appeal.

Orders accordingly.

**DATED, DELIVERED AND SIGNED IN NAIROBI THIS 3RD DAY OF MAY, 2023.**

**J. N. MULWA**

**JUDGE**

