



**Oyugi v Law Society of Kenya & another (Civil Case 482 of 2004)  
[2023] KEHC 19869 (KLR) (Civ) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19869 (KLR)

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

**CIVIL**

**CIVIL CASE 482 OF 2004**

**AN ONGERI, J**

**JULY 6, 2023**

**BETWEEN**

**STEPHEN OKERO OYUGI ..... PLAINTIFF**

**AND**

**LAW SOCIETY OF KENYA ..... 1<sup>ST</sup> DEFENDANT**

**SANJEV KHAGRAM ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

- 1) The application coming for consideration in this ruling is one dated March 22, 2023 seeking the following orders;
  - i. That this application be certified as urgent.
  - ii. That notice of this application to the plaintiff be dispensed with in the first instance and there be a stay of execution of the decree herein pending the hearing and determination of this application;
  - iii. That there be a stay of execution of the decree herein pending the hearing and determination of the intended appeal to the Court of Appeal against the whole of the judgment delivered by Mr Justice Serгон herein on February 24, 2023 on such terms as appear just and proper; and
  - iv. That the costs of this application be costs in the cause.
- 2) It is supported by the affidavit of Sanjeev Khagram in which it is deponed that on 24<sup>th</sup> this court delivered its judgment in favour of Plaintiff against the First and Second Defendants jointly and severally for Kshs 8,500,000 together with interest thereon at court rates from the date of judgment



until payment in full and costs of the suit. Being aggrieved by the judgement he has instructed his advocate to file an appeal against the said judgement and on March 6, 2023 filed a Notice of appeal.

- 3) He indicated that on March 3, 2023 he also wrote to the Deputy Registrar applying for copies of the Judgment and the proceedings in this suit in order to file and prosecute the intended appeal. The letter was received by the Deputy Registrar on March 6, 2023 on the e—filing portal and is currently waiting for the said receipt of the aforementioned documents.
- 4) The plaintiff filed a replying affidavit opposing the application dated April 6, 2023 in which he deponed that the suit herein was in court for over 18 years due to delays occasioned by the defendants. He indicated that the 1<sup>st</sup> defendant has not preferred an appeal as regards the interlocutory judgment entered against it nor on the judgement delivered on February 24, 2023 and therefore the application herein is premature and based entirely on conjecture as the execution process is yet to begin.
- 5) He averred that the decretal sum Kshs 8,500,000 is not substantial as indicated by the 2<sup>nd</sup> defendant as he is an advocate of the high court for over 32 years and as such, he is not a man of straw. That additionally the amount is way below his annual income from his practice that he has managed for over 34 years. He divulged that he currently lives in Kahawa Sukari in a 5-bedroom Mansion with a detached servant quarter, occupying a quarter of an Acre whose estimated value is over Kshs 40 million. That he has various properties in different counties and therefore he is able to refund the decretal amount if the appeal succeeds.
- 6) The parties filed written submissions as follows; the 2<sup>nd</sup> defendant submitted that although Judgment was entered by this Court against the Defendants on a joint and several basis, no interlocutory Judgment had ever been entered against the Second Defendant as is apparent from the record.
- 7) The 2<sup>nd</sup> defendant submitted that his appeal is arguable with a high chance of success and is willing to provide security for the same. On substantial loss he indicated that he is not aware of the plaintiff's income or assets and that the decretal sum if paid will not likely be recovered if his appeal is successful.
- 8) The plaintiff on the other hand submitted that the 2<sup>nd</sup> defendant has asserted that he will suffer substantial loss but has not demonstrated how and he indicated that he is not aware of the plaintiff's income and assets. The plaintiff contended that he is a professional as an advocate of the high court for more than 32 years and that he has immovable assets in various counties whose value far exceeds the decretal sum. The plaintiff contended that execution of the decretal amount will in no way render the 2<sup>nd</sup> defendant's appeal nugatory.
- 9) The plaintiff argued that under Order 42 Rule 6 (2) of the *Civil Procedure Rules* there is no requirement even for the Honourable Court to consider whether the appeal is arguable and/or that it has good chances of success. There are only 3 conditions to be considered to wit, substantial loss, application filed without unreasonable delay and security.
- 10) The 1<sup>st</sup> defendant did not file any submissions but they stated that they support the application.
- 11) The sole issue for determination is whether the 2<sup>nd</sup> defendant should be granted stay of execution pending appeal to the Court of Appeal.
- 12) The governing provisions is Order 42 Rule 6 which states as follows

- ' (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application



for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (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 Applicants 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 Applicants'.

13. I grant stay of execution on condition that half the decretal sum is deposited in an interest earning account jointly held by counsels by both parties within 30 days of this date.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 6<sup>TH</sup> DAY OF JULY, 2023.**

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**A. N. ONGERI**

**JUDGE**

**In the presence of:**

..... **for the Plaintiff**

..... **for the 1<sup>st</sup> Defendant**

..... **for the 2<sup>nd</sup> Defendant**

