



REPUBLIC OF KENYA



**Eurocollection Limited v Odhier & 3 others (Civil Appeal E004 of 2023)
[2023] KEHC 22825 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E004 OF 2023
DO OGEMBO, J
SEPTEMBER 21, 2023**

BETWEEN

EUROCOLLECTION LIMITED APPELLANT

AND

RICHARD OTIENO ODHIER 1ST RESPONDENT

CHARLES OMOLLO KOWI 2ND RESPONDENT

MAURICE OMONDI OYARO 3RD RESPONDENT

PETER MAINA NGUGI 4TH RESPONDENT

RULING

1. The Appellant, Eurocollection Ltd (the applicant) has moved this court by way of a notice of motion application dated 20-4-2023. Same brought under order 42 rule 6 and order 51 rule 1 of the [Civil Procedure Rules](#), prays that;

“That this Honourable court be pleased to order for stay of execution of the judgement/ and or decree made on 18-1-2023 where the Honourable court held the appellant 30% liable jointly and severally together with the 2nd Respondent, pending the hearing and determination of Siaya HCCA No. 004/2023.”

2. The application is supported by the Affidavit of Maurice Onyango Owich sworn on 5-4-2023. Both the 2nd and 4th Respondents do not offer this application. It is 1st Respondent who indicated opposition to this application.
3. On 31-5-2023, and by agreement of the parties, this court gave directions that this application be canvassed by way of submissions, whereas the 1st Respondent a replying Affidavit, 1st Respondent has not filed any submissions. In effect therefore only the submissions of the applicant are on record.



4. The 1st respondent, by way of the replying affidavit offers this application basically on grounds that;
 - i. That the applicant has not deposited any security of costs.
 - ii. That applicant has not demonstrated sufficient cause and what loss it stands to suffer if the orders are not granted.
 - iii. The 1st Respondent is entitled to the fruits of his judgement.
 - iv. That the appeal stands no chance of success.
5. In the submissions of the applicant, it has been submitted the issue of order of stay is a discretion of the court (*Butt vs. RRT* (1979) eKLR, and that stay pending appeal is to preserve the subject matters in dispute while balancing the interests of the parties and considering the circumstances of the case (*Ena Investment Ltd Vs Benard Ochau Mose & 2 others* (2022) eKLR.
6. It has further been submitted the applicants stand to suffer prejudice should execution proceed. And that the application has not been brought after unreasonably delay. Finally on the issue of security of costs, the applicant has offered willingness to deposit any security as may be ordered by the court.
7. I have considered the submissions of the applicant and the opposition by the 1st Respondent. I have also considered the nature of this application, which is an application for stay of proceedings pending the hearing and determination of the appeal filed, the case of *Absalom Dova vs Tarbo Transporters* (2013) eKLR gives a guide on an application such as this. In the case cited by the applicant, the court held;

“The discretionary relief of stay of execution finding appeal is designed on the basis that no one would be worse off by virtue of an order of the court; as each order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights, the appellant to this appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court, in balancing the 2 competing rights, focuses on reconciliation....”
8. It is indeed a balancing act that this court must perform and execute in this matter without a doubt, this appeal and the present application have been brought to court without delay.
9. The applicant herein has submitted that it is of means and is capable of providing security as may be ordered by the court, In ensuring that the appeal of the appellant is not rendered nugatory while at the same time safeguarding the interests of the 1st Respondent, the decree holder, this court is convinced that it would be proper and just to order the applicant to deposit security before the court pending the hearing and determination of the appeal filed herein.
10. I accordingly therefore allow the application dated 20-4-2023 on the following terms.
 - i. That a stay execution of the judgement or decree made on 18-1-2023 do and is hereby issued pending the hearing and determination of the appeal filed herein, as prayed in prayer 3 of this application.
 - ii. That as a condition to order (i) above, the appellant/applicant shall deposit into court, the 30% decretal amount as security within 30 days from the date herein.
 - iii. That in the meantime, and pending the expiry of the 30 days, there be a stay of execution of the judgement and decree made on 18-1-2023.



- iv. In default of the deposit of the security as ordered in (iii) above, the orders of stay ordered herein shall automatically lapse.
- v. Costs to the 1st respondent.

Orders accordingly

DATED, SIGNED AND DELIVERED AT SIAYA THIS 21ST DAY OF SEPTEMBER, 2023

D.O. OGEMBO

JUDGE

21.9.2023

Court:

Ruling read out in Open court in the presence of Ms. Onurito for Appellant and Mr. Trevor Oduor for 1st Respondent.

D.O. OGEMBO

JUDGE

21.9.2023

Court:

Certified copy of this ruling to be prepared and supplied to parties upon payment of requisite fees.

D.O. OGEMBO

JUDGE

21.9.2023

