



**Musau v Equity Bank Limited (Civil Appeal E011 of 2023)
[2023] KEHC 27318 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL APPEAL E011 OF 2023
SN MUTUKU, J
SEPTEMBER 19, 2023**

BETWEEN

JULIUS KYALO MUSAU APPELLANT

AND

EQUITY BANK LIMITED RESPONDENT

RULING

1. This Ruling relates to the Notice of Motion dated 9th May 2023 brought by the Appellant under Order 42 Rule 6 (1&2) if the [Civil Procedure Rules](#), Section 1A, 1B, 3A and 63 (e) of the [Civil Procedure Act](#), Article 50 (1) of the [Constitution of Kenya](#) 2010 and all other enabling provisions of the law. The Appellant seeks stay of execution of the judgement and decree issue in Kajiado CMCC No. 153 of 2018- on 26th January 2023 pending the hearing and determination of the application and the appeal and costs of the application.
2. The grounds in support of the application are that the Appellant is aggrieved with the said judgment and has preferred an appeal through his Memorandum of Appeal filed on 27th February 2023; that his household goods have been proclaimed by the Respondent and are in danger of being attached; that he has raised arguable appeal with serious triable issues; that he stands to suffer irreparable loss if the orders sought are not granted and that the Respondent will not suffer any prejudice if the orders sought are granted.
3. The Respondent has not filed a response to the application. Mr. Masai for the Respondent informed the court on 26th July 2023 that the Respondent was willing to have stay of execution granted subject to payment of security. He also informed the court that the Respondent would not file any submissions but would instead rely on the Replying Affidavit dated 22nd May 2023. I have not, however, found such a Replying Affidavit in the Court file.



4. Ms Yator, who was holding brief for Mr. Kariuki for the Applicant told the court that she did not have instructions on the issue of security.
5. Although parties had been directed by the Court, (Rayola Olel, J) on 24th May 2023 to file submissions in respect to this application, none of them has done so.
6. I have considered the application and the supporting affidavit with the annexures (copy of the judgment, copy of the memorandum of appeal, copy of the proclamation notice, and copy of the seven-day notice of proclamation). Order 42, rule 6. (1) and (2) provide as follows:

No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 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.

7. It is a requirement that security for costs be provided before an order for stay is granted. The Respondent does not seem opposed to the granting of stay of execution in this matter subject to security being provided. I therefore do not belabour the point. I will and do hereby allow the Notice of Motion dated 9th May 2023 on the following terms and conditions:
 - a. Stay of execution of the decree and judgment of the lower court in Kajiado CMCC No. 153 of 2018 is hereby granted pending the hearing and determination of the appeal herein.
 - b. The Appellant shall deposit the decretal amount in an interest earning account in joint names of both counsel within 45 days from today's date.
 - c. The Appellant shall prepare, file, and serve a Record of Appeal within 60 days from the date of this ruling.
 - d. This matter shall be mentioned on 30th November 2023 to confirm compliance with these orders and to give further directions.
 - e. Costs shall be in the cause.

8. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF SEPTEMBER 2023.

S. N. MUTUKU

JUDGE

