



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rentco Africa Limited & another v Munanji & another (Civil Appeal  
E127 of 2023) [2023] KEHC 25001 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 25001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E127 OF 2023  
DO CHEPKWONY, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**RENTCO AFRICA LIMITED ..... 1<sup>ST</sup> APPELLANT**

**MFI MANAGED DOCUMENTS SOLUTIONS LTD ..... 2<sup>ND</sup> APPELLANT**

**AND**

**BERITA MUNANJI ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTLINE ASSURANCE CO LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellant/Applicants filed Notice of Motion application dated 12<sup>th</sup> May, 2023 seeking the following orders:
  - a. Spent;
  - b. Spent;
  - c. That this Honourable Court be pleased to grant a stay of execution of the Ruling issued by Honourable M.W. Kurumbu on 8<sup>th</sup> May, 2023 pending the hearing and determination of the Appeal.
  - d. That this Honourable Court be pleased to grant a stay of sale of goods subject of the appeal and of the Ruling issued by Honourable M.W. Kurumbu on 8<sup>th</sup> May, 2023 pending the hearing and determination of the Appeal.
  - e. Spent;
  - f. That the costs of the application abide the outcome of the appeal.



2. The Application is based on the grounds on its face and the Supporting Affidavit of Robert Nyasimi, the Chief Executive Officer(CEO) of the 1<sup>st</sup> Appellant on its own behalf, and on behalf of the 2<sup>nd</sup> Appellant on 12<sup>th</sup> May, 2023.
3. He depones that in the Ruling delivered on 8<sup>th</sup> May, 2023 the court held that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants are not the owners of the attached goods which are subject to objection and the instant appeal. The Applicants were dissatisfied with that ruling and lodged the present appeal which they believe has a high chance of success. In the Applicant’s view, unless the application is granted, the goods will be sold and hence the appeal rendered nugatory.
4. In response the 1<sup>st</sup> Respondent filed Grounds of Opposition dated 18<sup>th</sup> May, 2023 and stated that the application is seeking stay orders on a ruling dated 8<sup>th</sup> May, 2023 which dismissed the Application dated 28<sup>th</sup> October, 2022 and which was seeking stay of execution of the said ruling *vide* the present application hence is incapable of being granted since it is a negative order.
5. Further, the 1<sup>st</sup> Respondent filed a Replying Affidavit she swore on 20<sup>th</sup> June, 2023 reiterating the Grounds of Opposition that the application is seeking stay of a negative order. The 1<sup>st</sup> Respondent depones that the Applicants/Appellants have not satisfied the condition for stay pending appeal under Order 42 Rule 6(2) of the *Civil Procedure Rules* and therefore the application should be dismissed. The 1<sup>st</sup> Respondent’s thought are that the application is merely an afterthought and is made in collusion with the 2<sup>nd</sup> Respondent to defend her from enjoying fruits of a successful Judgment.
6. By consent, the application was canvassed by way of written submissions and the record shows that indeed parties complied by filing their respective written submission which after reading through they do reiterate the above in summary.
7. The court has considered the application, the responses, the Applicants’ submissions date 4<sup>th</sup> July, 2023 and the Respondents’ submissions dated 20<sup>th</sup> June, 2023, as well as the authorities relied on therein and finds that there are two main issues for consideration and which have crystalized for determination namely:-
  - a. Whether the court can grant stay of execution of the ruling delivered on 8<sup>th</sup> May, 2023.
  - b. Whether the court can grant stay of sale of goods subject of the appeal pending the determination of the appeal.”
8. On whether stay of the ruling dated 8<sup>th</sup> May, 2023 can issue, it goes without saying that the Applicants seek to stay the execution of a ruling which had dismissed an objection application which in essence is seeking stay of negative order. The trial court merely dismissed the objection application without considering any of the parties to do or refrain from doing something. This view is expressed by the court in the case of *Catherine Njeri Maranga v Serah Chege & Another* [2017]eKLR, wherein the court held:-

“...The Applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the Applicant has lost. The refusal simply means that the Applicant stays in the situation he was before coming to court and therefore the issues of substantial loss that he is likely to suffer and the appeal being rendered nugatory does not arise”



9. Similarly, the Court of Appeal in the case of *Kausbik Panchamatia & 3 Others v Prime Bank Limited & Another* [2020]eKLR had this to say on negative orders:-

“...that a negative order is incapable of being stayed because there is nothing to stay. It therefore, follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed for by Applicants.”

10. It is not this court’s wish to reinvent the wheel but instead holds that a negative order, say for example an order dismissing a suit or an application, cannot be stayed as there is essentially nothing to stay of prevent from happening or continuing to happen. Therefore, this court need not address the tripartite conditions for stay of execution as enshrined under Order 42 Rule 6(2) of the *Civil Procedure Rules* as concern that issue for determination. It thus follows that an order cannot issue for staying the ruling issued by the Honourable M. W. Kurumbu on 8<sup>th</sup> May, 2023. Now, this court proceeds to consider and determine the next issue which is whether an order can issue staying the sale of goods subject of the appeal pending the hearing and determination of appeal. The Applicants/ Appellants aver that they have persuasive grounds to demonstrate that they are the owners of the attached goods and will suffer irreparable loss is they are sold and render the appeal an academic exercise. On the other hand, the Respondent avers that the Applicants/Appellants have not satisfied the requisite grounds for stay as captured under Order 42 Rule 6 of the *Civil Procedure Rules*. And that in any event, the allegations that the Applicants/Appellants are the owners of the subject goods is contradictory to an affidavit sworn by the 2<sup>nd</sup> Respondent on 12<sup>th</sup> May, 2023 claiming to be the owners of the same goods. Thus, for stay of execution to issue, the 1<sup>st</sup> Respondent submits that the Applicants/Appellants ought to show that they are the owners of the subject goods which they have failed to.
11. Both parties agree and the court reiterates that Order 2 Rule 6 of the *Civil Procedure Rules* stipulates the requirements upon which stay of execution pending appeal should be granted. In any event, the provision provides that for a party to successfully apply for stay of execution pending appeal, they must prove that the application has been filed without reasonable delay, the party is likely to suffer substantial loss willing to offer security for due performance of the decree and demonstrate sufficient cause to grant the stay and lastly demonstrate prospects of the appeal being successful so as not to render it nugatory.
12. In the instant case, the Applicants/Appellants contend that they had leased photocopiers to the Judgment-Debtor pursuant to a ten (10) year lease it executed with the Judgment-Debtor. The photocopies are part of the goods attached in execution of a decree entered against the Judgment-Debtor. The trial court declared the objection by the Appellant and the subject matter in the appeal is whether the trial court erred in not allowing the objection. So far, it is note-worthy that goods have not been pursuant to the interim orders granted herein and according to the Applicants/Appellants, if stay of the intended sale is not allowed, then the goods shall be sold and the appeal thus rendered otiose.
13. In this court’s view, the attached goods form subject of this appeal as and if sold then there will be no point of prosecuting the appeal, as submitted by the Applicants/Appellants. Whatever possession the Applicants/Appellants are claiming will already have been transferred to a third party by the time the appeal is determined.
14. Consequently, it is the court’s view that it will serve less harm in postponing the intended sale pending the hearing and determination of the appeal then allowing the sale of the attached goods, hence turn the appeal a mere academic exercise. The court is thus persuaded that the intended sale will ruin the Applicants’/Appellants’ title over the attached goods, so that if not stayed, shall cause the higher prejudice and or substantial loss to the Applicants/Appellants than the Respondent.



15. On the issue of whether the application was made timeously, both parties have contended that there was no inordinate delay exhibited by the Applicants/Appellants in filing the application, hence this court wishes not to belabour on the same.
16. Lastly, is the issue of whether security should have been offered for the due performance of the order and or decree in this case, the court notes that the Applicant/Appellant is not the decree-holder and the subject appeal only seeks to challenge the security of the attached goods, so that if the appeal success, the Respondent/Judgment-Debtor holder shall have nothing in the decree. The only issue in contention is only possession of the attached goods and if the appeal is to fail, the attached goods would be available for sale and prejudice occasioned can be addressed by an award of costs.
17. In the circumstances, this court is of the opinion that this is not a case where to for security for the due performance of the order a decree to issue since the appeal seeks to challenge the ownership of some of the attached goods and not the decree. Therefore, the rights for both parties can be addressed and catered for if timelines for the expeditious disposal of the pending appeal are well observed.
18. In the upshot, in view of the above discussion, this court is inclined to partly allow the prayers sought in the Notice of Motion application dated 12<sup>th</sup> May, 2023 to the extent of the following orders:-
  - a. That, there be and is hereby issued an order staying the sale of the attached goods subject of this case pending the hearing and determination of the appeal.
  - b. That, the Applicants/Appellants to compile, file and serve a Record of Appeal within Forty-Five (45) days from the date of this ruling.
  - c. That, the Deputy Registrar of this court to call for and avail the original record of proceedings to enable the appeal be admitted for hearing.
  - d. Mention on ..... for parties to confirm compliance and take further directions on hearing of the appeal.
  - e. Failure to comply with order (b) above, will render the application dated 12<sup>th</sup> May, 2023 dismissed and for the Respondent to be at liberty to execute.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**D.O CHEPKWONY**

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

