



**Blue Seal Communications Limited v Alacha (Civil Appeal  
E092 of 2024) [2024] KEHC 13621 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13621 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E092 OF 2024  
RE ABURILI, J  
NOVEMBER 4, 2024**

**BETWEEN**

**BLUE SEAL COMMUNICATIONS LIMITED ..... APPELLANT**

**AND**

**MILVEN VIVIAN ALACHA ..... RESPONDENT**

*(Arising from the Judgment and decree of Hon. G. C. Serem RM, Adjudicator in Kisumu  
Small Claims Court Commercial Case No. E596 of 2023 rendered on 25th April, 2024)*

**RULING**

**Ruling On Extension Of Time To Comply With Conditional Stay And Review Of Order On Security**

1. On 14<sup>th</sup> June 2024, this Court rendered a Ruling determining the Appellant's application dated 15<sup>th</sup> May 2024 in which the appellant sought for orders of stay of execution of decree in Kisumu Small Claims Court Case No. E596 of 2023 pending hearing and determination of this appeal.
2. In the said application, which was argued interpartes, the Appellant urged the court not to give any condition of stay as the appellant was unable to meet the conditions and the timelines suggested by the Respondent. The Respondent had opposed the application for stay of execution of decree and in a vehement manner but softened with a conditional stay.
3. This Court in the Ruling delivered on 14<sup>th</sup> June 2024 granted stay of execution of decree in SCC No. E596 of 2023 pending hearing and determination of the appeal conditional upon the Appellant depositing into court the whole of the decretal sum inclusive of costs within 30 days of 14<sup>th</sup> June 2024 and fixed the appeal for mention before the Deputy Registrar on 18<sup>th</sup> July 2024 to confirm compliance.
4. It should be noted that in the application for stay, the Appellant asserted that the Respondent had no known fixed abode, no business and that if she was paid the decretal amount, it will never be recovered



as her income or means were unknown. Further, that the court should not therefore grant a conditional stay because there was no transaction between the parties.

5. As soon as the timelines for complying with the conditional stay were over, vide an application dated 24<sup>th</sup> July 2024, the Appellant filed another application under certificate of urgency seeking among other orders, extension of time to comply with the orders of stay of execution of decree pending appeal and for reduction of the amount to be deposited into court by half. He sought for 45 days to comply because his business had closed and is on the verge of bankruptcy.
6. The application was argued orally before me on 3<sup>rd</sup> October 2024 with Mr. Chemwok Advocate reiterating the grounds and depositions by his client while Mr. Ondego counsel for the Respondent opposed the application and submitted that the Ruling of 14<sup>th</sup> June 2024 on stay was clear on compliance. He relied on the grounds of opposition as filed and contended that no grounds were given for non compliance. He urged this court to dismiss the appeal for non compliance with the court's directions.
7. In a rejoinder, Mr. Chemwok submitted that the application was for stay and that therefore the appeal cannot be dismissed. Further, that the reasons for non compliance have been explained in the application.

### **Analysis and Determination**

8. I have considered the Appellant's application for extension of time to comply with the orders of 14<sup>th</sup> June 2024, the grounds, supporting affidavit and oral submissions. I have also given equal consideration to the Grounds of opposition and oral submissions in court by the Respondent's counsel.
9. The issue for determination is whether this court should enlarge time for compliance with the orders of stay issued on 14<sup>th</sup> June 2024 and if so, whether the conditions for stay should be varied.
10. It is not in dispute that this court granted a conditional stay of execution of decree in the Small Claims Court pending hearing and determination of this appeal. This court also gave timelines for compliance with the said orders of conditional stay.
11. In the earlier application, the Appellant had prayed for a non conditional stay, which the court considered but in line with Order 42 Rule 6(2) of the *Civil Procedure Rules*, this court did grant a conditional stay, directing the Appellant to deposit the entire decretal sum with costs into court instead of paying it into a fixed deposit joint interest earning account or paying a part of the decretal sum to the Respondent, as security for the due performance of decree as stipulated in Order 42 Rule 6(2) of the *Civil Procedure Rules* being one of the conditions for stay that must be met by an applicant.
12. It is also not in dispute that the application for stay was vehemently opposed and that in this latter application, it is obvious that the appellant has not complied with the conditional stay issued on 14<sup>th</sup> June 2024.
13. As correctly pointed out by Mr. Chemwok counsel for the Appellant, this court cannot dismiss the entire appeal for non-compliance with stay orders. That is so, considering that lapse of the orders of stay, unless extended, automatically gives way for execution of the decree. This court would therefore not dismiss the appeal for want of compliance with stay of execution of decree orders. To do so would be an overreach.
14. On the other hand, the applicant who was unable to comply with the conditional stay and or meet the timelines set in the stay order has timeously approached this court seeking for the court's discretion to extend the time for compliance and to have the amount reduced by half. The appellant has given



reasons for non-compliance and it is upon this Court to consider those reasons on merit. Such a party who had deponed an affidavit expressing his financial difficulties and not merely seeking to avoid settling decree which he is bound to settle save for his challenge of that decree through this appeal must be heard.

15. In *Republic v Principal Secretary, Ministry of Defence Exparte George Kariuki Waitbaka* [2018] eKLR Odunga J (as he then was) had this to say and I concur that:

“ 27. In my view, a party facing financial constraints is at liberty to move the court for appropriate orders which would enable it to settle its obligations while staying afloat. That however, is not a reason for one to evade its responsibility to settle such obligation. In other words, financial difficulty is only a consideration when it comes to compel the Respondent to settle a sum decreed by the court to be due from it...”

16. The Appellant in the supporting affidavit and submissions by its counsel is saying that its business had closed and is on the verge of Bankruptcy. The financial status of the Judgment Debtor/Appellant herein is peculiarly within his knowledge. He is however expected to satisfy this court that his accounts are in the red so that it is not left to this court to assist him to evade compliance with directions of the court. That would be aiding contempt of court orders.
17. However, the Appellant has given on oath reasons for the delay in complying with the order of stay and has approached the seat of justice, seeking an extension of time to comply partially due to economic/ financial hardship that it is undergoing. That deposition is not controverted by any contrary evidence.
18. That being the case, and as this court exists to do justice to both parties to a suit, and as the discretion of this court to extend time is unfettered, which discretion can be exercised to ensure no party suffers prejudice, I hereby allow the prayer for extension of time to comply with the conditional stay orders issued on 14<sup>th</sup> June 2024.
19. The Appellant shall now comply with the said orders within 45 days of this Ruling.
20. On the prayer that the court allows the Appellant to deposit half of the total decretal sum and not the whole amount owing to the financial constraints being experienced by the Appellant’s business, I hereby review the order of 14<sup>th</sup> June 2024 and substitute it with an order directing the Appellant to deposit into court Kshs.500,000 (Five Hundred Thousand) within the 45 days stated above. In default these orders will lapse and execution to issue.
21. The costs of this application are awarded to the Respondent and shall be in the appeal.
22. Mention before the Deputy Registrar on 19/12/2024 to confirm compliance.
23. The Deputy Registrar to call for the lower court file to be availed for admission of the appeal.
24. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

