



REPUBLIC OF KENYA



**Meshack v Njuguna (Civil Appeal E1098 of 2024)
[2024] KEHC 13705 (KLR) (Civ) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13705 (KLR)

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

CIVIL

CIVIL APPEAL E1098 OF 2024

JM OMIDO, J

NOVEMBER 8, 2024

BETWEEN

FRED NYACHAE MESHACK APPELLANT

AND

JENNIFER WANJIRU NJUGUNA RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. Caroline K. Ireri Adjudicator/Resident Magistrate delivered on 29th August, 2024 in Milimani SCC COMM No. E157 of 2023)

RULING

1. The application subject to which this ruling is made has been presented by the Appellant by way of Motion on Notice and is expressed to be under Article 159 of the Constitution of Kenya, 2010, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya and Order 42 rule 6, Order 22 rule 22, Order 51 rule 1 and 3, Order 9 rule 9, Order 10 rule 11 and Order 3 rule 15 of the Civil Procedure Rules and seeks the following prayers:
 1. [Spent].
 2. [Spent].
 3. That the honourable court be pleased to issue an order staying the execution of the judgement dated 28th August, 2024 in Milimani Small Claims Court Case No. E157 of 2023 for the sum of Ksh.167,650/- with interest and costs against the Appellant/Applicant pending hearing and determination of the current appeal.
2. In precis, the grounds upon which the application is premised are that being dissatisfied with the judgement of the lower court, the Appellant lodged the current appeal, which may be rendered nugatory if the orders sought in the motion are not granted.



3. The application is supported by the Appellant's affidavit sworn on 26th September, 2024. The affidavit expounds on the grounds that I have summarized above.
4. The Appellant has also proffered the grounds that the application has been presented without undue delay and that the Appellant is willing to comply with such conditions as the court may order.
5. The Appellant further urges that he stands to suffer substantial loss as the financial capacity of the Respondent is not known and if the latter is allowed to proceed with execution, the Appellant may not be able to recover from the Respondent if ultimately the appeal succeeds.
6. The Respondent was served with the application and notified of the hearing date thereof to the satisfaction of the court but neither responded to the motion nor attended court when the same was listed for hearing. As such, the application was not resisted.
7. Having considered the application, the affidavit in support thereof and the record in its entirety, I deduce the issue for determination to be whether the Appellant has demonstrated that the order of stay of execution pending appeal is merited.
8. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules. Let us read it:
Order 42 rule 6
 - (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.
9. However, it is to be noted that the court is no longer limited to the foregoing provisions in light of the overriding objective stipulated in Sections 1A and 1B of the *Civil Procedure Act*. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions and may therefore grant an order of stay of execution pending appeal if sufficient cause is shown without strictly tying itself down to the above provision.
10. In the instant case, no doubt, the Appellant brought the application timeously. The Appellant has stated in his affidavit that he is ready and willing to satisfy any conditions that the court may attach to the order of stay of execution pending appeal. I understand the Appellant to mean compliance even on conditions regarding the furnishing of security, as the court may make. The Appellant has also stated that he stands to suffer substantial loss as he may be unable to recover from the Respondent, if execution proceeds, and his appeal ultimately succeeds.
11. As stated above, there was no response or opposition filed by the Respondent to the Motion. I would in the circumstances agree with the Appellant that the Respondent's financial capability remains unknown. I am satisfied, in the premises, that the Appellant has met all the three conditions set out under Order 46 rule 6(2) of the Civil Procedure Rules and the application is merited.
12. In the result, I allow the Appellant's Notice of Motion dated 26th August, 2024 in the following terms:
 - a. An order of stay of execution of the judgement and decree delivered on 29th August, 2024 in Milimani Small Claims Court Case No. E157 of 2023 is hereby granted pending the hearing and determination of the present appeal on the condition that the Appellant deposits in court



within 30 days from the date of this ruling the amount of Ksh.100,000/- as security for the due performance of such decree or order as may ultimately be binding upon him.

- b. That in the event of default by the Appellant of (a) above, the order of stay of execution pending appeal shall automatically stand vacated and the instant application will be deemed as having been dismissed with costs from the date of this ruling.
- c. Subject to (b) above, the costs of the application will abide the outcome of the appeal.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 8TH DAY OF NOVEMBER, 2024.

JOE M. OMIDO

JUDGE

For the Appellant: No appearance.

For the Respondent: Ms. Kyalo.

Court Assistant: Ms. Njoroge.

Court: Mention before the Deputy Registrar on 11th December, 2024. A mention notice to be served upon the Appellant.,

JOE M. OMIDO

JUDGE

