



**Njogu v Kamonye (Civil Appeal E258 of 2024)  
[2024] KEHC 16869 (KLR) (Civ) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 16869 (KLR)

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

**CIVIL  
CIVIL APPEAL E258 OF 2024**

**JN MULWA, J  
NOVEMBER 14, 2024**

**BETWEEN**

**PRISCILLAH WAMBUI NJOGU ..... APPELLANT**

**AND**

**JOAN WAIRIMU KAMONYE ..... RESPONDENT**

**RULING**

1. By a Motion dated 22/02/2024 the Applicant sought orders of stay of execution of the judgment of the trial court delivered on 20/02/2024 whereof being dissatisfied, filed this Appeal vide a Memorandum of Appeal dated 22/02/2024.
2. The motion is premised upon provisions of Order 42 Rule 6 of the Civil Procedure Rules and the Supporting Affidavit sworn by the Applicant on an even date. It is opposed by a Replying Affidavit of the Respondent sworn on 30/05/2024.
3. The court has considered the affidavits and counsel oral arguments.
4. Conditions that a party must meet for an order of stay of execution pending appeal to be granted are stated at Order 42 Rule 6 (1) (2) of the Civil Procedure Rules being demonstration that the application has been brought within reasonable period after delivery of the Judgment, and that if not granted the applicant shall suffer substantial loss. In addition, the applicant must offer sufficient security for the due performance of the decree – see the case of Tiny Bees Credit (K) Ltd vs. Patrick Macharia Nderitu & Another [2022] eKLR.
5. The court is satisfied that the motion was brought within reasonable period so no delay is exhibited.
6. On substantial loss, the court finds that despite the applicant having been served with the statement of claim and the court according him several opportunities by way of mentions, she failed to attend court



thereby the court proceeding to hear the claim in her absence resulting to the impugned judgment dated 9/01/2024 against her in the sum of Kshs. 801,355/=.

7. The court is alive to the fact that execution of a legal decree is lawful and rarely will it stay its execution unless there is demonstratable evidence that the applicant would suffer substantial loss that cannot be compensated in costs.
8. Upon perusal of the Supporting Affidavit to the motion, the court finds no averment or demonstration by the applicant of what loss it would suffer if the decretal sum is paid to the respondent nor that the same would render the Appeal nugatory.
9. Mere statements not anchored on evidence remain as such.
10. In the case of Njenga v. Njeri & 2 Others [2023] eKLR the court held that it is not normal in a money decree for the appeal to be rendered nugatory if payment is made citing the holding in the matter of Kenya Shell Ltd v. Benjamin Keruga Kibiru & Another [1986] eKLR.
11. The right of appeal must be balanced against an equally weighty right of the Decree Holder to enjoy the fruits of its judgment and there must be a good reason to deprive him of that right.
12. It is also a right of the Appellant to have the subject of the appeal preserved during the pendency of the appeal so as not to render it nugatory, therefore the balancing of both parties interests ought to be balanced taking into consideration that the court's power to allow or not to allow is purely upon the court's discretion as ably held in the case of Butt v. Rent Restriction Tribunal [1982] KLR.
13. For the foregoing the court is persuaded to allow the motion dated 22/02/2024 upon the Applicant/Appellant complying with the following conditions:-
  1. That the Applicant shall deposit 50% of the decretal sum in a joint interest earning account in the parties advocates names within 30 days. In default the stay orders of execution shall lapse automatically.
  2. The Record of Appeal shall be filed and exchanged within 60 days of this ruling
  3. The Appeal shall be listed for mention for directions on 12/2/2025.
  4. Costs of the application shall be borne by the Appellant/Applicant.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**JANET MULWA**

**JUDGE**

