



**Platinum Credit Limited & another v Juma (Civil Appeal  
E113 of 2024) [2024] KEHC 15567 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15567 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL APPEAL E113 OF 2024**

**DK KEMEL, J**

**DECEMBER 6, 2024**

**BETWEEN**

**PLATINUM CREDIT LIMITED ..... 1<sup>ST</sup> APPLICANT**

**ANTIQUA AUCTIONEERS AGENCIES ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JOSEPH WANJALA JUMA ..... RESPONDENT**

**RULING**

1. Pursuant to Rule 3 (2) of the High Court (Practice and Procedure) Rules of the *Judicature Act*, Order 42 Rule 6 (2) of the Civil Procedure 2019 (2) (d) of *the Constitution* of Kenya 2010, The High Court Practice & Procedure Vacation Rules, the Applicants herein vide an application dated 5<sup>th</sup> August 2024, are seeking for the following reliefs:
  - a. Spent.
  - b. Spent.
  - c. An order to issue staying execution of the decree issued on 31<sup>st</sup> July 2024 in Bungoma CMCC No. E400 of 2022 against Ignatius Obara and Robert W. Maina employees of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively, pending the hearing and determination of this application.
  - d. An order to issue staying execution of the decree issued on 31<sup>st</sup> July 2024 in Bungoma CMCC No. E400 of 2022 against Ignatius Obara and Robert W. Maina employees of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively, pending the hearing and determination of the appeal.
  - e. An order to issue lifting and/or staying execution of warrant of arrest issued against Ignatius Obara and Robert W. Maina employees of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively on 31<sup>st</sup> July 2024 in Bungoma CMCC No. E400 of 2022, pending hearing and determination of this application;



- f. Costs be provided.
2. The application is supported by the affidavit of Hezron Abok Advocates for the Applicants herein sworn on even date and further on the following grounds:
- a. That the Respondent herein filed an application for contempt of Court dated 18<sup>th</sup> June 2024, seeking the committal to civil jail of the Applicants' directors for alleged disobedience of Court orders issued sometime on the 19<sup>th</sup> January 2023.
  - b. That the Applicants' Counsel filed grounds of opposition to the said application and a replying affidavit sworn by the 1<sup>st</sup> Applicant's assets recovery manager setting the record straight regarding the compliance of Court orders issued on 9<sup>th</sup> January 2023.
  - c. That the said application dated 18<sup>th</sup> June 2024 came up for inter partes hearing on the 25<sup>th</sup> July 2024 when the Applicants' Advocate on record logged in virtually but was not admitted on the platform.
  - d. That the purpose of logging in virtually before the Honourable Court on 25<sup>th</sup> July 2024 was to seek more time to put in a replying affidavit.
  - e. That subsequently, the Applicants' advocate then filed an application on the same day dated 25<sup>th</sup> July 2024, seeking to set aside the proceedings of the 25<sup>th</sup> July 2024 as well as stay the Court's ruling scheduled for 31<sup>st</sup> July 2024.
  - f. That the Applicants application dated 25<sup>th</sup> July 2024 came up for directions on 29<sup>th</sup> July 2024, and it was directed that the same be heard on 31<sup>st</sup> July 2024.
  - g. That the matter came up for ruling on 31<sup>st</sup> July 2024, when the lower Court issued warrants of arrest against the Applicants' employees despite filing responses to the said application and the application dated 25<sup>th</sup> July 2024, remaining unheard.
  - h. That in the premises, there is a real risk that the Applicants' employees will stand condemned unheard contrary to rules of natural justice.
  - i. That it is in the interest of justice that the application be allowed and orders sought granted.
3. The application was strenuously opposed by the Respondent who swore a replying affidavit on 21<sup>st</sup> August 2024, wherein he averred that the Applicants' directors acted in contempt of the orders issued on 19<sup>th</sup> January 2023, and 26<sup>th</sup> July 2023 as the 1<sup>st</sup> Applicant immediately failed to comply with the Court's order by releasing motor vehicle registration number KCP 624R to the Respondent.
4. Vide a further affidavit in response to the Respondent's replying affidavit dated 21<sup>st</sup> August 2024, the Applicants averred that they have never disobeyed the Court's Judgement and decree as they indicated that they had released the motor vehicle registration number KCP 624R to the Respondent who was to physically go and collect the same from the storage yard and that the physical custody of the suit motor vehicle did not lie with the Applicants. Further, as the Respondent is not denying the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Applicants replying affidavit in response to the application dated 18<sup>th</sup> June 2024, was on the record but never considered by the trial Court in its ruling, this Court should set aside the contentious lower Court proceedings and the orders issued.
5. The application was canvassed by way of written submissions. However, it is only the Applicants who complied with this directive.



6. I have given due consideration to the application, rival affidavits, and the submissions tendered. The Applicants application basically seeks for an order of stay of execution of warrant of arrest pending the determination of the appeal. The same therefore is premised on Order 42 Rule 6 of the Civil Procedure Rules which specifies the circumstances under which this court may order a stay of execution of a decree or order pending an appeal.
7. Rule 6 (2) lays down the conditions which the Applicants herein must satisfy in order to deserve orders of stay of execution pending an appeal. The Applicants must satisfy the Court that they stand to suffer substantial loss if the stay is not granted and that the application has been filed without unreasonable delay. The Applicants must also show that they are willing to offer such security as may be binding for the due performance of the decree.
8. As regards the time taken by the Applicants to lodge the application, it is noted that the Court order in Bungonga CMCC No. E400 of 2022 was issued on 31<sup>st</sup> July 2024. The Applicants filed the present application on 1<sup>st</sup> August 2024, and the record indicates a Memorandum of Appeal dated 31<sup>st</sup> July 2024 was filed on 31<sup>st</sup> July 2024. It is therefore quite clear that the application has been made timeously as it was filed in less than four days. Hence, i find the application was filed without unreasonable delay.
9. As regards the issue of whether the Applicants stand to suffer substantial loss if the stay is not granted, it is noted that the Applicants averred that in their response to the application for contempt dated 18<sup>th</sup> June 2024, the Respondents contended that they were condemned unheard despite a pending application praying for stay of proceedings dated 25<sup>th</sup> July 2024, and further that it has filed a Memorandum of Appeal which has high chances of success. The Applicants further aver that they should be allowed to prosecute the application dated 25<sup>th</sup> July 2024, to canvass the appeal without a warrant of arrest hanging on the necks of the Applicants' employees. The said issues could be arguable grounds in the appeal and hence i find the merits or otherwise of the same could be properly determined during the hearing of the appeal.
10. As to whether the appeal has high chances of success, i need not delve into the same at this juncture but leave it for the hearing of the appeal. The Applicants have also averred that the 1<sup>st</sup> Applicant immediately complied with Court orders by clearly indicating that it had released the suit motor vehicle and pointed out that the physical custody of the motor vehicle did not lie with the Applicants. Further, the Applicants were condemned unheard contrary to the dictates of natural justice. All these issues would best be determined in the appeal. I find that in the event of the appeal succeeding and without an order of stay of execution of warrants of arrest, there is a high likelihood that the Applicants will suffer substantial loss.
11. On the issue of security, the Applicants submitted that the order being appealed against is not a money decree/order to warrant them to deposit in Court security. The purpose for granting an order of stay was elucidated by the Court in RWW vs. EKW (2019) eKLR where the Court stated:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed to grant or refuse an application for a stay of execution pending appeal is



discretionary. The Court when granting the stay, however, must balance the interests of the Appellant with those of the Respondent.”

12. In this case, the Applicants have duly demonstrated that they stand to suffer a substantial loss, being the continued loss of their employees' liberty. They filed this application without unreasonable delay and have an arguable appeal. The Applicants submitted that being condemned to pay security pending determination of the appeal would amount to further subjugation of the Applicant's employees' rights.

13. In the case of *Gianfranco Manenthi & Another vs Africa Merchant Assurance Co. Ltd* [2019] eKLR it was held that:-

“The applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition, a party who seeks the right of appeal from a money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under Order 42 Rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal falls.

Further Order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgment involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal....

Thus, the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree.”

14. The Applicants did not state with regard to the issue of security that they were ready to abide by any conditions that may be imposed by the Court. The Respondent on the other hand, did not submit on the same. The Court must similarly consider the overriding objective and balance the interest of the parties to the suit while considering the issue of security to be offered. The law is that where the Applicants intend to exercise their undoubted right of appeal, and in the event, that they were eventually to succeed, they should not be faced with a situation in which they would find themselves unable to get back their money. Likewise, the Respondent who has a decree in his favour should not, if the Applicants were eventually to be unsuccessful in its intended appeal, find it difficult or impossible to realize the decree. This is the cornerstone of the requirement for security. I am of the view that the Appellants/Applicants should deposit a sum of Kshs 100, 000/ into court as security pending the determination of the appeal and that in the event of default, then the Respondent shall be at liberty to execute the decree.

15. In view of the foregoing observations, the Appellants' application dated 31/7/2024 has merit. The same is allowed in the following terms:

- a. An order of stay of execution of the warrants of arrest issued by the lower court in Bungoma CMMC No. E400 of 2022 is hereby issued pending the determination of the appeal upon the



Applicants depositing the sum of Kenya shillings One Hundred Thousand (Kshs.100, 000/=) into Court as security of this appeal within the next thirty (30) days from the date hereof failing which the stay shall lapse.

b. The costs of this Application shall abide in the appeal.

It is so ordered.

**DATED AND DELIVERED AT SIAYA THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024.**

**D. KEMEI**

**JUDGE**

In the presence of :

Mulama ..... for Appellants/Applicants

Mukhooli ..... for Respondent

Kizito/Ogendo ..... Court Assistant

