



REPUBLIC OF KENYA



KENYA LAW
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**El Dad Holdings Limited v Njenga (Civil Appeal E136 of 2025)
[2025] KEHC 13767 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E136 OF 2025
EN MAINA, J
SEPTEMBER 25, 2025**

BETWEEN

EL DAD HOLDINGS LIMITED APPELLANT

AND

AGNES MUTHONI NJENGA RESPONDENT

RULING

1. This ruling relates to the Applicant’s Notice of Motion dated 12th June, 2025 which seeks the following orders;
 - a. Spent
 - b. Spent
 - c. This Honourable Court be pleased to order a stay of execution of the judgment and orders delivered by the Subordinate Court on 5th June, 2025 in SCCC No. E1553 of 2024 pending the hearing and determination of the appeal herein.
 - d. That the costs be provided for.”
2. The application was opposed through a replying affidavit sworn by the Advocate for the Respondent, George Osanda Osino dated 14th July, 2025 where he deposes that the Respondent is willing to grant a stay of execution only if the whole decretal sum is deposited in a joint interest earning account held in the name of both advocates. It was contended that the application was made in bad faith, was an abuse of the court process and is an afterthought that is meant to frustrate the Respondent from enjoying the fruits of the judgement.



3. Learned Counsel for the parties agreed to canvass the application by way of written submissions with the Applicant submissions dated 22nd July 2025 and the Respondent submissions being dated 23rd July 2025.
4. The Applicant relied on the case of *Amal Hauliers Limited v Abdulnasir Abukar Hassan* [2017] eKLR and submitted that due to the economic times, he is willing to deposit Kshs 150,000 in a joint interest earning account operated by the Counsels on record. It was further submitted that the judgment was delivered on 5th June 2025 and thus the application has been brought on time; that he is apprehensive that the Respondent may attach its property; that he has an arguable appeal with a high chance of succeeding and it would be rendered nugatory if this application was not allowed.
5. The Respondent relied on the cases of *Macharia vs Wachira* [2024] KEHC 4223 KLR and *Wanjohi vs Isaac* [2025] KEHC 6794 (KLR) and submitted that the applicant has failed to demonstrate the substantial loss that would justify a stay of execution. In addition, that Kshs 100,000 as security was so little and Kshs 507,700 as security would be sufficient as a show of good will.

Analysis and determination.

6. The court has considered the application, the submissions, the cases cited thereat and the law.
7. Stay of execution is governed by Order 42 Rule 6(1) & (2) of the Civil Procedure Rules. The main considerations are whether the Applicant is likely to suffer substantial loss should the application be disallowed and the appeal succeeds; whether the application has been made timeously and whether the Applicant is willing to deposit such security as would be ordered by the court.
8. In this case, the judgment was delivered on 5th June 2025 and Application herein was filed on 12th June 2025, there was thus no delay in filing the application.
9. On the issue of substantial loss, this court is guided by the case of *Tropical Commodities Suppliers Ltd and Others v International Credit Bank Limited (in liquidation)* (2004) EA LR 331, defined substantial loss in the sense of Order 42 rule 6 as follows:-

“ ... Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal”
10. In this case, the Applicant has appealed and is apprehensive that, should the Respondent execute the decree and the appeal succeeds, she shall not be in a position to refund the decretal sum. Listening to Counsel from the Respondent he is not opposed to the application save that the decretal sum should be deposited in court. As the Applicant is willing to abide with the conditions as may be set by this court as regards the deposit for security, I shall grant the stay of execution on condition that the Applicant demonstrates his bona fides by depositing the entire decretal sum either in court or in an interest earning account in the joint names of the Advocates for the parties within thirty (30) days.
11. The Appellant/Applicant shall bear the costs of this application.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 25TH DAY OF SEPTEMBER 2025.

E N MAINA

JUDGE



In presence of:

Mr Mirembe, Advocate for the Respondent.

Mr Ruiru, Advocate for the Appellant/Applicant.

Geoffrey Court Assistant/ interpreter.

