



REPUBLIC OF KENYA



KENYA LAW
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**Musyimi v Simu t/a Jacktone Stores (Environment and Land Appeal
E070 of 2025) [2025] KEELC 6687 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6687 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E070 OF 2025**

JG KEMEI, J

SEPTEMBER 30, 2025

BETWEEN

MARY MUNYIVA MUSYIMI APPELLANT

AND

ANTHONY SIMU T/A JACKTONE STORES RESPONDENT

(In Respect of the Appellant's Application dated 30/5/25)

RULING

1. Vide this Notice of Motion Application dated 30/5/25, which is premised on Article 50 and 169 of the Constitution, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, the Appellant /Applicant has sought the following substantive orders:
 - a. Spent
 - b. That this Honourable Court be pleased to grant leave for the firm of W.M. Kithuka & Company Advocates to come on record for the Appellant/Applicant.
 - c. That this Honourable Court be pleased to stay Respondent's party and Party Bill of Costs dated 08.05.2025 filed at the Business Premises Rent Tribunal at Nairobi in BPRT Case No. E1280 OF 2023 Antony Simu T/a Jacton Stores Versus Mary Munyiva Musyimi pending the hearing and determination of this application.
 - d. That this Honourable Court be pleased to stay the Respondent's Party and Party Bill of Costs dated 08.05.2025 filed at the Business Premises Rent Tribunal at Nairobi in BPRT Case No. E1280 OF 2023 *Anthony Simu T/a Jacton Stores Versus Mary Munyiva Musyimi* pending the hearing and determination of this Appeal.
 - e. That this Honourable Court be pleased to grant an Order of stay of execution of the Judgment of the Business Premises and Rent Tribunal sitting in Nairobi delivered on 14.03.2025 in



Business Premises Tribunal Case No. E1280 Of 2023 *Anthony Simu T/a Jacton Stores v Mary Munyiva Musyimi* and all other consequential Orders emanating therein pending the hearing and determination of this application.

- f. That this Honourable Court be pleased to grant an Order of stay of execution of the Judgment of the Business Premises Rent Tribunal sitting in Nairobi delivered on 14/3/2025 in Business Premises Rent Tribunal Case No. E1280 Of 2023- *Anthony Simu T/a Jacton Stores v Mary Munyiva Musyimi* and all other consequential orders emanating therein pending the hearing and determination of the Appeal.
 - g. That the costs of the application be in the cause.
2. The application is based on the grounds attached thereto and the supporting affidavit of Mary Munyiva Musyimi sworn on 30/5/25. She deponed that she is aggrieved by the decision of the Tribunal issued on 14/3/25, which awarded the sum of Kshs 475,000/- to the Respondent as compensation for the wrongful attachment of the property, as well as the costs of the reference. The Respondent has filed a party-to-party bill of costs, which was scheduled for taxation on 4/6/25, hence the imminent threat of execution of the Court's judgment. That she stands to suffer loss if the orders sought herein are declined, as it could render the appeal nugatory. That she is willing to abide by the conditions set by the Court as may be deemed necessary. That the appeal is arguable with high chances of success.
 3. The Respondent opposes the application via the replying affidavit sworn on 13/6/25. He deponed that filing a bill of costs does not itself become a threat to the execution of the judgement. That unless the appellant demonstrates substantial loss, the filing and prosecution of a bill of costs alone does not amount to substantial loss. Moreover, the claim is monetary in nature, and the Applicant has not demonstrated to the Court that the Respondent is a man of straw who cannot refund the sums should the Applicant's appeal be successful. Furthermore, the Respondent averred that there has been an inordinate delay in filing the application, which further undermines its prospects in the circumstances.
 4. The Court was urged to find that justice would be served if the application is refused on the grounds that the unlawful actions of the Applicant impaired the Respondent's business, and that the Court should not grant any favour to her.
 5. On 25/6/2017, the parties elected to file and exchange written submissions, but as at the time of writing the ruling, none of the parties have complied. Despite the non-compliance by the parties, the Court will proceed to determine the application based on the material before it.
 6. Having considered the application and the response by the Respondent the only issue for determination is whether the application is merited.
 7. Order 9 Rule 9 of *Civil Procedure Rules* stipulates that;
 - a. upon an application with notice to all the parties; or
 - b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be."
 8. The above provisions intend to cure the mischief of litigants sacking their advocates at the execution stage or at the point of filing their bill of costs thus denying their advocates their hard-earned fees.



9. Regarding the prayer for leave for the firm of W M Kithuka & Company Advocates to come on record for the Applicant, I observe that this Court is sitting as an appellate Court. I have consistently maintained that Order 9 Rules 9 and 10 of the Civil Procedure Rules do not apply in appeal cases because the advocate's instructions in the lower Court are considered complete at the end of a matter. Requiring such leave would effectively deny the appellant the right to legal representation of their choice at the appellate stage, thereby undermining the aim of just and swift resolution of disputes. Therefore, I find that the prayer is unnecessary.
10. Is the Applicant deserving of a stay of execution of the judgment issued by the Court on 14/3/25? An Applicant for an order of stay of execution of a decree or order pending appeal is obliged under Order 42 rule 6(2) to satisfy the following conditions, namely:
 - a. That substantial loss may result to the Applicant unless the order is granted.
 - b. That the application has been made without unreasonable delay, and
 - c. That such security as the Court orders for the due performance of such decree or order as may ultimately be binding on the Applicant has been given.
11. To begin with, the Court's judgment was delivered on 14/3/25, and the application was filed on 30/5/25, a period of 75 days. It is well established that there is no precise formula for determining what is inordinate or not. Although each case must be evaluated based on its specific circumstances, the principle of reasonableness should apply. The Applicant has failed to provide any reason or explanation for the delay in filing this application. It is the explanation for the delay that permits the exercise of discretion in favour of the Applicant. In the absence of any explanation, I find that the delay in filing the application is excessive and inexcusable given the circumstances.
12. Regarding the issue of substantial loss, the Applicant states that she faces a significant risk of loss because the Respondent is likely to execute the decree at any moment. She also mentions that he has begun claiming costs by filing a Bill of Costs. It is well-established law that execution is a lawful process and is not a valid reason for granting a stay of execution. The Applicant must demonstrate how the execution would cause irreparable harm to them or how it would alter the current situation to their disadvantage, rendering the appeal nugatory or pointless. However, she has failed to do so in this case. Since this is a monetary claim, the Applicant has not shown that, even if execution proceeds, the Respondent is unable to refund the funds. In my view, the Applicant has not sufficiently demonstrated that she would suffer substantial loss if the application is refused.
13. Final Orders for Disposal
 - a. Having failed to demonstrate substantial loss, I see no grounds to exercise discretion in favour of the Applicant, other than to state that the application is unmerited.
 - b. It is dismissed with costs which should abide the appeal.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2025 THROUGH MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered Online in the Presence of;



NA for the Appellant

Respondent present in Person

C/A – Ms Yvette Njoroge

