



**Spoton Vacations Limited v Njoki & another (Civil Appeal E1024 of 2024)
[2025] KEHC 13385 (KLR) (Civ) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13385 (KLR)

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

CIVIL

CIVIL APPEAL E1024 OF 2024

AC MRIMA, J

SEPTEMBER 30, 2025

BETWEEN

SPOTON VACATIONS LIMITED APPLICANT

AND

ALUO JANE NJOKI 1ST RESPONDENT

TERESIA MUTINDI MUNYWOKI 2ND RESPONDENT

RULING

1. Through an application by way of a Notice of Motion dated 4th September 2024, the Applicant herein sought the following orders: -
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to issue a stay of execution, implementation and / or operation of the determination and Enforcement Notice issued against the Applicant/ Appellant issued on the 26th August,2024 pending the hearing and determination of the Appeal herein.
 4. That costs of and incidental to this application do abide the result of the Appeal.
2. The application was premised on the grounds on the face of it and the supporting affidavit of Mark Nuguti, the Applicant's Director, sworn on 4th Sepetember,2024. As discerned from the grounds and the supporting affidavit, the Applicant was aggrieved by the determination of the Data Commissioner in which she awarded the 1st and 2nd Respondents the sum of Kshs. 200,000/= and Kshs. 450,000/= respectively, following a complaint that was filed at the Office of the Data Commissioner against the



Applicant. The Applicant also filed written submissions dated 20th November 2024 in further support of the application.

3. The Applicant contended that its appeal is arguable and that it raises triable issues with high chances of success. Additionally, the Applicant averred that the appeal would be rendered nugatory, and further that their business would collapse should execution proceed. In the end, the Applicant expressed their willingness to provide security as may be ordered by this Court.
4. The application was vehemently opposed by the 1st and 2nd Respondents who filed Replying Affidavits and written submissions dated 14th December 2024 and 21st February, 2025 respectively. The 1st Respondent submitted that the Applicant had failed to demonstrate any substantial loss they are likely to face should execution issue and further that the application is a deliberate action by the Applicant to delay in remitting the sums ordered. The 2nd Respondent on the other hand submitted that the Applicant had not met the threshold under Order 42 Rule 6(2) and further that should the Court be inclined to grant the said orders, then the Applicant should deposit the decretal sum in a joint interest-earning account in the names of the Advocates currently on record.
5. This Court has carefully considered the application, the responses, the parties' submissions and the decisions referred thereto. The applicable principles in instances where a Court is called upon to consider granting stay of execution orders are well settled. Order 42, Rule 6 of the [Civil Procedure Rules](#) provides that an Applicant must satisfy the following conjunctive requirements for the grant of stay of execution pending appeal; that is to say: -
 - i. The application has been made without unreasonable delay;
 - ii. Substantial loss may result to the Applicant unless the order is made; and
 - iii. That the Applicant is willing to furnish such security as the court orders for the due performance of such decree.
6. It is not lost that the purpose of stay pending appeal as held in the case of [RWW vs. EKW](#) [2019] eKLR, is as follows: -

...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 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.
7. The application shall, hence, be determined under the three parameters captioned above. As to whether the application was filed timeously, the determination by the office of Data Commissioner was issued on 26th August 2024. The instant application was filed on 5th September 2024, There was, therefore, no delay in this matter.
8. On whether the Applicant will suffer any substantial loss, that subject was discussed in [James Wangalwa & Another vs. Agnes Naliaka Cheseto](#) [2012] eKLR as follows: -

..... No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has



been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

9. The Applicant submitted that it was apprehensive that should execution issue, it will likely close its business leading to termination and cancellation of contracts between itself and third parties and employees thereby exposing it to more litigation. It further reiterated its willingness to provide security for due performance as the Court orders.
10. This Court has considered the state of affairs, as it were, in this matter. Weighed against the Respondents' opposition, the Applicant's concerns and the Respondents' fears can be well balanced in allowing the application on condition that the determination of the appeal be fast tracked. It is on that understanding that the following final orders do hereby issue: -
 - (a) Pending the hearing and determination of the appeal, a stay of execution of the determination of the Office of Data Commissioner dated 26th August 2024 be and is hereby granted on condition that the Applicant deposits the sum of Kshs. 650,000/= (Kenya Shillings Six Hundred and Fifty Thousand Shillings only) in court within 21 days from the date hereof and in default execution to issue.
 - (b) Costs of this application to the Respondents.

Orders accordingly.

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

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Mburu, Learned Counsel for the Appellant.

Mr. Mukanda, Learned Counsel for the 2nd Respondent and holding brief for Mr. Isorio for 1st Respondent.

Amina/Michael – Court Assistants.

