



**Dalaro Logistics Ltd & another v Gichuki (Miscellaneous Case E262 of 2025) [2025] KEHC 13588 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13588 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CASE E262 OF 2025  
SM MOHOCHI, J  
OCTOBER 1, 2025**

**BETWEEN**

**DALARO LOGISTICS LTD ..... 1<sup>ST</sup> APPLICANT**

**DANIEL NJOROGE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JAMES KIARIE GICHUKI ..... RESPONDENT**

**RULING**

1. The Application before court is a Notice of Motion dated 12<sup>th</sup> August 2025 filed pursuant to Orders 50 rule 6, 42 Rule 6 (1) and (6), 51 Rule 1 of the Civil Procedure Rules Sections 3A, 63(e), 22G and 95 of the Civil Procedure Act, Chapter 21.
2. The Applicants crave for the following relief(s);
  - i. Spent
  - ii. Spent
  - iii. That, this Honorable Court be pleased to enlarge time within which the Applicants may lodge their intended appeal against the judgment delivered in Molo CMCC No. E403 of 2024 James Kiarie Gichuki v Dalaro Logistics Limited & Daniel Njoroge.
  - iv. That, the orders sought under prayer 2 above be confirmed upon hearing of the application till the hearing of the intended appeal.
  - v. That, the costs of this application be provided for.
3. The Application is supported by the sworn affidavit of Mercy Muyuka and is based on the following principal grounds;



- a. That, the Honorable Trial Magistrate delivered judgment Molo CMCC No. E403 of 2024 James Kiarie Gichuki v Dalaro Logistics Limited & Daniel Njoroge on 4th July, 2025 in favor of the Respondent herein.
  - b. That, the Respondents have already extracted a decree and certificate of stated costs and are ready to initiate execution against the Applicants hence putting the Applicants assets and resources at risk.
  - c. That, the statutory period within which the Applicants may lodge an appeal has since lapsed and the intended appeal risks being rendered nugatory if the instant application is not allowed.
  - d. That, the delay in lodging the intended appeal within the statutory period was not intentional, but occasioned by the inadvertent mistake on the part of the Applicants' advocate who faced unforeseen technical difficulties with their emails which impaired timely communication between the Applicant's insurer and the advocate.
  - e. That, the Applicant's advocate only became aware that the instructions to Appeal had been sent via email when they were promoted by a phone call by the Applicant's insurer.
  - f. That, the court should not visit the mistake of the advocate upon the Applicant.
  - g. That, the Respondent through his Advocates may move at any time to commence execution making the appeal herein nugatory and an academic exercise.
  - h. That, the Applicants stand to suffer substantial and irreparable harm if orders for stay of execution is not issued urgently, as they may never recover the decretal sum.
  - i. That, the Applicants have an arguable and meritorious Appeal with good chances of success.
  - j. That, the Respondent through his Advocates may move at any time to commence execution making the appeal herein nugatory and an academic exercise.
  - k. That, the Applicants stand to suffer substantial and irreparable harm if orders for stay of execution is not issued urgently, as they may never recover the decretal sum.
  - l. That, the Applicants have an arguable and meritorious Appeal with good chances of success.
  - m. That, the Applicants are bound to suffer irreparable prejudice, loss and damage unless this Honorable Court grants the Orders sought herein
  - n. That, it is in the interest of justice that the Applicants be allowed to appeal the judgment of the Honorable trial magistrate out of the prescribed time.
  - o. That, the Respondent will not suffer prejudice if the said leave is granted.
  - p. That, the Applicants' insurer is ready and willing to issue a bank guarantee with respect to the entire decretal sum.
  - q. That, there has been no inordinate delay in bringing this application before this Honorable Court
4. Mercy Muyuka further submitted that mistake by counsel should not be visited upon her clients and that she was approaching the court only 20 days after the lapse of time which is excusable in the interest of justice.



5. That is the judgment was to be executed by the Respondent they might be unable to recover the same from the Respondent whose means are unknown.
6. Finally, that the Appellants insurers are willing to offer security for costs urging for the Application to be allowed.

### **Respondent's Case**

7. The, Respondent opposed the Application and filed an Affidavit dated 22<sup>nd</sup> September 2025 by Caroline Chelangat terming the Application as a delay tactic to frustrate a successful litigant.
8. That the reliefs sought are equitable and discretionary, relying on the Nicholas Salat decision and that the Applicants are of unclean hands having failed to disclose of the 45 days leave granted by the subordinate court or account for the period of leave so granted.
9. That, the email technical challenge, is not a sufficient reason to justify extension of time and if the Application is allowed they shall be prejudiced.
10. That the Draft Memorandum of Appeal does not disclose any Appeal save for it being an appeal on quantum only.
11. That the Application lacks specificity with regards to security, in all the Respondent submits that the Application fails to satisfy any condition to warrant merit
12. That, a party seeking an order for stay of execution of judgment must satisfy the court that substantial loss would ensue unless an order of stay of execution is granted.
13. That, the Applicant seeking an order of stay of execution is enjoined to furnish such security as the court orders for due performance of such decree or order as may ultimately be binding on him.
14. That, the Applicant seeking an order for stay of execution of judgment must file the said application without unreasonable delay.
15. That the application for stay of execution of the judgment is intended to deny him from enjoying the fruits of the judgment and more so the costs of Kshs. 2, 038,058 /- which was awarded in his favour.
16. That, it is in the interest of justice, fairness and equity that the application dated 12<sup>th</sup> August 2025 be dismissed with costs.

### **Analysis and determination**

17. I have considered the Application, Supporting Affidavit, the Respondent's Replying Affidavit, the attachments and the submissions. This Court clothed with the jurisdiction to entertain the instant Application, the only issue for determination is whether the Application has merit.
18. The conditions that have to be met prior to the Court issuing stay orders pending appeal are set out under Order 42 Rule 6(2) of the Civil Procedure Rules which stipulates: -

No order for stay of execution shall be made under sub rule 1 unless:-

- a. The Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and



- b. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.
19. In essence the Applicant should satisfy the Court that: -
  - a. Substantial loss may result to it should the order not issue;
  - b. The application has been made without unreasonable delay; and
  - c. Such security for the due performance of such decree or order has been given as may ultimately be binding on it
20. The conditions for granting stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules should be met simultaneously.
21. The Court lacks jurisdiction to issue stay against execution of judgment decree in vacuum and absence of a substantive action in the nature of the appeal as was held by the Supreme Court in *Siboe v Kenya Railways Corporation & another* (Application 9 of 2017) [2019] KESC 39 (KLR) (30 April 2019) (Ruling).
22. In *Vishram Ravji Halai vs. Thornton & Turpin* Civil Application No. Nai. 15 of 1990 [1990] KLR 365, the Court of Appeal held that,

“whereas the Court of Appeal’s power to grant a stay pending appeal is unfettered, the High Court’s jurisdiction to do so under Order 41 rule 6 of the Civil Procedure Rules is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay”.
23. Therefore, the stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in sections 1A and 1B of the *Civil Procedure Act*, the Court shall give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.
24. Section 1A(2) of the *Civil Procedure Act* provides that

“the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective”
25. section 1B some of the aims of the said objective are; the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.
26. Therefore, it follows that I am further enjoined to ensure that, the aims and intendment of the overriding objective as stipulated in section 1A as read with section 1B of the *Civil Procedure Act* are attained. It is therefore important that the Court takes into consideration the likely effect of granting the stay on the proceedings in question. In other words, the Court ought to weigh the likely consequences of granting the stay or not doing so and lean towards a determination which is unlikely to lead to an undesirable or absurd outcome. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie considering the fact that it is the business of the court, so far as possible, to secure that any



transitional motions before the Court do not render nugatory the ultimate end of justice. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice.

27. In this instance we have a judgment/decree holder which validity is impugned and valid and an Applicant who seeks stay of execution on an intended quantum Appeal only while liability remains uncontested thus the Respondent is entitled to the fruits of his judgment and as such it calls for a greater expectation that the Applicant must offer real security for costs under the circumstances and if possible settle the difference between the contested award and the Applicants quantum.
28. Secondly the principles governing an ex-parte application in respect of leave to file a suit out of time were enunciated in the Supreme Court case of County Executive of Kisumu v County Government of Kisumu and 8 Others (2017) eKLR [Civil Application No. 3 of 2016] as follows: -
- a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - c. Whether the court should exercise the discretion to extend time is a consideration to be made on a case-by-case basis;
  - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  - f. Whether the application has been brought without undue delay; and
  - g. Whether in certain cases, like the election petitions, public interest should be a consideration for extending time.....
29. In Nick Salat v Independent Electoral and Boundaries Commission & 7 others the Supreme Court observed as follows: -

... Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.

30. The Apex Court in the case of Nick Salat (supra) observed thus:

... In those circumstances, it is incumbent on the Applicant for an extension of time to provide the court with a full, honest and acceptable explanation of the reasons for the delay. He cannot reasonably expect the discretion to be exercised in his favor, as a defaulter, unless he provides an explanation for the default.

### **Undue delay**

31. The Applicant admittedly attributed the delay to unintentional indolence and inadvertent mistake by counsel who faced unforeseen technical difficulties with their emails impairing their timely communication between the Applicant's insurer and the advocate.



32. The reason proffered is ingenious at best as the court has not been offered any exposition of the inadvertent mistake, the difficulties of email communication between the advocates and non-parties to the proceedings and its actual bearing herein is not explained.
33. This Court, therefore, finds and hold that the delay in lodging the appeal was not satisfactorily explained by the Applicants.

### **Substantial loss**

34. On substantial loss, there is a decree alive and execution is a valid legal process. The Respondent is entitled to employ all legal means at her disposal in order to get what is rightfully owed to her. The Applicant has submitted that the substantial loss likely to be suffered is that it would amount to unjust enrichment by the Respondents if they were allowed to execute against a claim challenged on Appeal and that the Respondents All except one named Respondent described as the one (T/A Trading as) has a known source of income.
35. In *Stephen Njau Kamau v Erick Jacques Jean Maries & 3 others* [2015] KEHC 3825 (KLR) as cited in *Tropical Commodities Suppliers Ltd & Others v international Credit Bank Ltd (in liquidation)* [2004] 2 EA 331 the Court stated that: -

“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.’

36. The Applicants have not demonstrated how they are likely to suffer substantial loss should the Respondent proceed with execution against them.
37. In *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR) the Court observed that:

“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.”

38. This limb has not been satisfied or met.

### **Security for costs**

39. The Respondents have argued that, the Applicants have not intimated the desire to provide security or otherwise. I have perused the Supporting Affidavit and the Applicants have not offered any terms of security but its undisclosed insurers were ready to furnish security by way of guarantee, on the conditions of the Court,.
40. The issue of Security for costs is at the discretion of the Court. The kind of security for due performance of the decree to be provided by a party is to be considered on a case-to-case basis. The right of appeal of the Applicant must be weighed against the right of the Respondent to enjoy the fruits of the judgment delivered in her favour.
41. The Applicants has expressed that its undisclosed insurers were ready to furnish security on the conditions of the Court, this is foggy and doggy on the part of the Applicants the lack of clarity



is indicative of their non-committal nature. The Court in exercising its discretion can direct the Applicants regarding the security of costs to be offered and give conditions within which to do so.

42. Taking all the above factors into account and in order not to render the intended appeal nugatory as well as to give effect to the overriding objective of the *Civil Procedure Act* and *the Constitution*, the proper approach is to do justice to all with the interest of justice in mind.
43. If there is a chance that the Respondents risks harm that is irreparable then stay ought not to be issued. On the other hand, if there is a risk that the Applicants may suffer irreparable loss which would ideally not be redeemable if the appeal does succeed then stay ought to be granted. In balancing the rights of each party, the Court at this point cannot delve on the merit of the appeal. Nonetheless, in the event that there may be some merit in the appeal the Respondents is likely to suffer lower prejudice if stay of execution is allowed, the said prejudice can also be compensated by costs.
44. All in All, the Application fails for want of merit.
45. Accordingly, I hereby disallow the Application dated 12<sup>th</sup> August 2025 for want of merit, and dismiss the same, with costs to the Respondent.
46. However, this court as a court of equity and in balancing the interests of the parties is inclined to direct as follows: -
  - a. A Conditional order of stay against execution is hereby issued against judgment and consequent decree and certificate of costs, delivered on the 31/7/2025 in Molo CMCC No. E403 of 2024 James Kiarie Gichuki v Dalara Logistics Limited & Daniel Njoroge, pending the hearing and determination of the Appeal.
  - b. The Applicants shall pay to the Respondent 50% of the Decretal sum of Kshs 1, 019,029/= in Molo CMCC No. E403 of 2024 James Kiarie Gichuki v Dalara Logistics Limited & Daniel Njoroge, within Sixty (60) days of this Ruling;
  - c. The Respondent's shall have costs of the Application assessed at Kshs. 20,000/- to be paid within thirty (30) days of this Ruling;
  - d. In the event of default of (b) or (c) above, The Conditional Order granted shall automatically lapse, and the Respondent shall be at liberty to execute;
  - e. The Appellants shall file and serve a Memorandum of Appeal within sixty (60) days of this Ruling;

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 1<sup>ST</sup> DAY OF OCTOBER 2025**

**MOHOCHI S. M.**

**JUDGE**

