



**Radar Security Limited v Obiele (Appeal E189 of 2022)
[2025] KEELRC 2704 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2704 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E189 OF 2022
SC RUTTO, J
OCTOBER 3, 2025**

BETWEEN

RADAR SECURITY LIMITED APPELLANT

AND

KENNEDY KHATETE OBIELE RESPONDENT

RULING

1. Before this Court for determination is the Applicant's Notice of Motion dated 19th June 2025, expressed to be brought under Section 1A, 1B & 3A of the [Civil Procedure Act](#), Order 42 Rule 6(1) (a) (b) and (3) Order 40 Rule 1& 2 of the Civil Procedure Rules.
2. The substantive reliefs sought in the Notice of Motion are orders of stay of execution of the judgment and decree in Nairobi CMEL Case No. 130 of 2018 pending the hearing and determination of the Applicant's intended Appeal against the decision of this Court delivered on 13th June 2025.
3. The Application is supported by the affidavit sworn by Beryl Odhiambo, the Applicant's Human Resource Manager. Grounds in support of the Motion are that the Applicant's Application for Review was dismissed by this Court vide its Ruling delivered on 13th June, 2025, thereby exposing it to imminent execution of the judgment delivered on 9th September 2022, in Nairobi CMEL Case No. 130 of 2018.
4. The Applicant avers that, being dissatisfied with this Court's Ruling, it has filed and served a Notice of Appeal. According to the Applicant, the intended Appeal is arguable and has high chances of success. That the Applicant is apprehensive that unless stay is granted, the Respondent will proceed with execution to its prejudice, thereby rendering the Appeal nugatory.
5. In her Supporting Affidavit, Ms. Odhiambo has expressed the Applicant's willingness to furnish security by depositing motor vehicle logbooks before the Court.



6. The Application is opposed. By a Replying Affidavit sworn on 27th June 2025, the Respondent herein, Kennedy Kahatete Obiele avers that the Applicant is abusing the court process, having previously filed but failed to prosecute similar applications. He further contends that this Court, having issued the orders being appealed against, the appropriate orders should have been sought in the Court of Appeal.
7. The Respondent further holds that the intended appeal has no chance of success, hence the orders sought should be declined.
8. In response to the Applicant's assertion of its willingness to deposit security in the form of logbooks before this Court, the Respondent contends that the Applicant disobeyed an order issued on 16th May 2024, in which it had been ordered to deposit the Logbook of its motor vehicle as security within 30 days.
9. In the Respondent's view, the Applicant has failed to demonstrate adequately or at all what substantial loss it may face unless a stay of execution issued.

Submissions

10. The parties canvassed the Application through written submissions, which the Court has duly considered.

Analysis and Determination

11. The sole issue arising for determination is whether the Applicant has satisfied the requirements for grant of stay of execution pending Appeal.
12. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules which is central to the determination of this issue, provides as follows:
 - “(1) No appeal or second appeal shall operate as a stay of execution or proceeding under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (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.”
13. Fundamentally, the following conditions must be satisfied by an Applicant seeking stay of execution of a decree or order pending Appeal:



- a. Substantial loss may result to him unless the order is made;
 - b. The application has been made without unreasonable delay; and
 - c. The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
14. In addition to the foregoing conditions, the Court observed in *Michael Ntouthi Mitheu v Abraham Kivondo Musau* [2021] eKLR that courts are enjoined to 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.
 15. That said, I now move to consider whether the Applicant herein has satisfied the conditions for grant of stay.

Substantial loss

16. With regards to substantial loss, the Applicant has averred that following the dismissal of its Application for Review on 13th June 2025, it is exposed to massive financial loss, proclamation, attachment and sale of its properties pursuant to execution proceedings in Nairobi CMEL Case No. 130 of 2018. The Applicant further avers that unless execution is stayed, it is apprehensive that the Respondent will rush to execute the decree, exposing it to imperative loss.
17. In the case of *Kenya Shell Limited vs Kibiru* [1986] KLR 410, the Court held as follows:

“...Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money”.
18. Essentially, the purpose of stay of execution is to preserve the subject matter in dispute. All in all, the Court must endeavour to balance the interests of the parties to the suit. In this regard, while the Respondent is entitled to enjoy the fruits of his Judgment, the Applicant, who has already exercised his right of appeal, should not be confronted with a situation where he is unable to get a refund of his money in the event his Appeal succeeds.
19. As stated herein, the Applicant is apprehensive that he will suffer substantial loss in the event of execution of the judgment. It is noteworthy that the Respondent has not indicated or demonstrated that he has the financial means to refund the decretal sum, should the Appeal succeed. The Court must balance the rights of both parties, that is, the Respondent’s right to enjoy the fruits of judgment, and the Applicant’s right to pursue an Appeal that is not rendered nugatory.
20. Therefore, the apprehension by the Applicant is real and the Court is persuaded that the Applicant is likely to suffer substantial loss in the event the Application is not granted and the Appeal ultimately succeeds.

Application has been made without unreasonable delay.

21. Under this head, the court is satisfied that the instant Application has been filed timeously. This is on the basis that the Ruling sought to be appealed by the Applicant was delivered on 13th June 2025, while the instant Application was lodged on 19th June 2025.



Security

22. The imposition of security as a condition precedent to the grant of stay of execution operates to safeguard the decree-holder's entitlement to the fruits of judgment, whilst concurrently preserving the appellant's right of appeal, thereby striking an equitable balance between the competing interests.
23. Addressing this issue, the Court in the case of Gianfranco Manenthi & another vs Africa Merchant Assurance Company Ltd [2019] eKLR, reckoned as follows:

“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 degree in order to enjoy the fruits of his judgment in case the appeal fails.

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 judgement involves a money decree.”
24. In the present case, the Applicant has expressed willingness to deposit security in the form of log books valued and registered before this Court. Countering this assertion, the Respondent has contended that the Applicant is in breach of an earlier order of this court issued on 16th May 2024, directing the deposit of a motor vehicle logbook within 30 days. The Applicant has not refuted this default. It follows that the renewed proposal is untenable.
25. The total award in question is for the sum of Kshs 712,966.20 and from the time the Judgment was delivered, the same became due to the Respondent who was the successful litigant at the trial Court.
26. Accordingly, since the grant of stay would deny the Respondent the immediate enjoyment of the fruits of his Judgment pending the outcome of the Appeal, it is incumbent upon the Applicant to provide security. This requirement embodies the very essence of Order 42 Rule 6(2)(b) of the Civil Procedure Rules.

Orders

27. In sum, the Application dated 19th June 2025 is allowed in the following terms: -
 - a. An order of stay of execution of the Judgment delivered on 9th September 2022 in Milimani CMEL No. 130 of 2018 is hereby granted, pending the hearing and determination of the Applicant's Appeal.
 - b. The Applicant shall deposit the decretal sum of Kshs. 712,966.20 in an interest-earning account to be opened in the joint names of the Advocates on record for the parties within thirty (30) days from the date hereof.
 - c. In default of compliance with Order (b) above, the stay of execution herein granted shall stand automatically vacated.
 - d. There will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd day of October, 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Wachakana for the Applicant/Appellant

Mr. Mwangi for the Respondent

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

