Rameshwar Distributors Ltd v Echken Agencies Ltd (Civil Appeal E203 of 2025) [2025] KEHC 14411 (KLR) (14 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14411 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL APPEAL E203 OF 2025

G MUTAI, J

OCTOBER 14, 2025

BETWEEN

RAMESHWAR DISTRIBUTORS LTD ..... APPELLANT

AND

ECHKEN AGENCIES LTD ..... RESPONDENT

RULING

1. The application before the court is a notice of motion dated 9th July 2025 vide which the appellant/applicant seek to stay the execution of the ruling delivered by the Hon Lucy Khaendi Sindani on 3rd July 2025 vide which the corporate veil was lifted and execution against the directors of the appellant/applicant was ordered, pending the hearing and determination of the appeal.

2. The appellant/applicant stated that the ruling was self-executing and that there was a clear and present risk that the execution would be carried out against the directors, which action would render the appeal an academic exercise.

3. The application has been opposed. The respondent filed a replying affidavit, sworn by Fareed M Sharif on 15th July 2025, in which it was averred that the respondent was frustrated in its attempt to execute the judgment by the actions of the appellant/applicant. Mr Sharif deposed that the application had no merit and prayed for its dismissal with costs.

4. The respondent alternatively prayed that the court order the deposit of Kes.3,927,368/26 in an interest-earning account, if at all it was minded to allow the application.

5. The application was canvassed by way of oral submissions on 23rd July 2025. I have considered the submissions. In my view, the issue is whether the appellants/applicants have satisfied the requirements of Order 42 Rule 6 of the Civil Procedure Rules.

6. Order 42 Rule 6 (2) of the Civil Procedure Rules states that: -

> " No order for stay of execution shall be made under subrule (1) unless:-
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> 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
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> 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."

7. My understanding of the said rule is that an applicant must show:-

   a. That it will suffer substantial loss unless a stay is granted;

   b. That the application was filed without undue delay; and

   c. Provide security for the due performance of any order/decree that may ultimately be binding on it.

8. What amounts to a substantial loss has been defined in a number of cases. In James Wangalwa & Another V Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR), Gikonyo, J stated as follows:-

> " 11. 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. This is what substantial loss would entail, a question that was aptly discussed in the case of Silverstein v Chesoni [2002] 1KLR 867, and also in the case of Mukuma v Abuoga quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:
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> "...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. I have perused the memorandum of appeal. The appellant/applicant avers that it was wrong for the trial court to lift the corporate veil and to order the directors to pay the decretal sum themselves. The questions raised in the appeal are not idle and deserve scrutiny by this court in the exercise of its appellate jurisdiction. If the ruling of the court below is executed, the directors, in their individual capacities, will suffer personal loss. In the circumstances, I am satisfied that the first element has been demonstrated.

10. The application was filed within 6 days of the date of the ruling. The applicants have also expressed a willingness to deposit security in a joint interest-earning account. Under the circumstances, I find and hold that the other 2 elements have been met.

11. In the circumstance, I allow the application dated 9th July 2025 on condition that the sum of Kes.3,927,368/26 is deposited in a joint interest-earning account in the name of both parties' counsels

within 30 days of the date hereof. If the appellant/applicant defaults by not depositing the said amount within the stated time, the respondent will be at liberty to execute.

12. Regarding costs, the same will be in the cause.

13. Orders accordingly.

DATED AND SIGNED AT MOMBASA, THE 14TH DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Kamau, holding brief for Mr Swaka, for the Appellant /Applicant;

No appearance for the Respondent; and

Arthur - Court Assistant.