



**Singoei & another v Kipketer (Miscellaneous Civil Application
E012 of 2025) [2025] KEHC 13890 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13890 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E012 OF 2025**

**E OMINDE, J
OCTOBER 2, 2025**

BETWEEN

WILSON KIPRUGUT SINGOEI 1ST APPLICANT

PAUL KIMAIYO 2ND APPLICANT

AND

JAMES KIPKETER RESPONDENT

RULING

1. What is pending before this court is the Applicants' Notice of Motion dated 23/01/2025 seeking the following orders;
 - a. Spent
 - b. Spent
 - c. That a temporary stay of execution does issue ex parte in the interim and/or further execution against the judgment/decre in Eldoret Small Claim No, E1199 OF 2023 and all consequential orders and/or proceedings arising there from pending the hearing and determination of the Appeal
 - d. That this Honorable court be pleased to grant the Applicant/Appellant leave to file a Memorandum of Appeal out of the stipulated thirty days after judgment against a judgment delivered on 31st October 2024 by Hon. Rodgers Otieno in Eldoret Small Claim No 1199 OF 2023.
 - e. That upon grant of prayer 4, a time be specified within which to file the Memorandum of Appeal
 - f. That the costs of this application be in the cause.



2. The Application is expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3, 3A and 63 of the Civil Procedure Act, and ‘all other enabling provisions of the law’.
3. The Application is premised on the grounds on the face of it and the averments of the 2nd Applicant in the supporting affidavit. He deposed that the trial court delivered judgement on 31st August 2024 and being dissatisfied with the same he has preferred an Appeal. He annexed and marked as PK 1 a copy of the judgement and memorandum of appeal.
4. Further, that if the decretal amount is paid to the Respondent, the appeal will be rendered nugatory. He urged that the Respondent has obtained warrants of attachment in execution of the decree as he is the sole breadwinner, his family will suffer if he is committed to civil jail. Further, that he has met all the requirements of Order 42 Rule 6 of the Civil Procedure Rules and prays the court allow the application.
5. In response to the Application, the Respondent filed a Replying Affidavit dated 10th March 2025. He deposed that on 31st October 2024 Judgement was entered in his favour in Eldoret Small Claims Civil Claim No. Ell99 of 2023 for the sum of Kshs. 470,429/- and the Applicants were given 30 days stay of execution. On 22nd November 2024 costs of the suit were duly taxed at Kshs. 74, 400 plus Interests, making a total of Kshs. 548,231,55/= as per the Decree dated 4th December 2024. He stated that the Applicants have not demonstrated that he is impecunious, hence undeserving to be paid the decretal amount of Kshs. 548, 231.55/= and further, that the application does not meet the threshold for grant of stay of execution pending appeal. He deposed that the Applicants do not stand to suffer any substantial loss if stay is not granted.
6. The deponent stated that the Applicants have not given adequate reasons to warrant extension and/or enlargement of time within which to appeal against the judgement delivered on 31st October, 2024 in Eldoret Small Claims Civil Claim No. Ell99 of 2023. That the Applicants have therefore come to court with unclean hands, and equity aids the vigilant, and not the indolent.
7. Additionally, that there has been an inordinate delay in filing this application as the judgement of the trial court was delivered more than Two Months, and Three Weeks ago. He stated that he is however amenable to have half of the decretal sum paid to him, together with the assessed costs, and the balance to be deposited in a joint earning account as security as this is a money decree.
8. He prayed the court dismiss the application with costs.
9. The parties were directed to file submissions and the Applicants filed submissions dated 28th January 2025 through the firm of Messrs Martim & Company Advocates whereas the Respondents filed submissions dated 10th March 2025 through the firm of Messrs. Kogo Kimutai & Co Advocates.

Applicants’ Submissions

10. Learned counsel for the Applicants stated that they have met the threshold for grant of the orders sought. He cited the cases of Chris Mungan N. Bichase vs Richard Nyasaka Tongi & 2 Others (2018) eKLR and Halal &, Another VS Thourtone Turpin Ltd. He urged that the Applicant has demonstrated that the intended appeal will be rendered nugatory if the stay is not granted, placing reliance on the case of Hassan Guyo Wakelo vs Straman EA Ltd (2013) eKLR.
11. On whether substantial loss may result to the Applicants, counsel referred the court to paragraph 8 of the supporting affidavit and stated that the Respondent obtained warrant of arrest in execution of judgment attendant decree. Further, that if the Applicant is committed he will suffer irreparable



harm as the sole bread winner in his household. Additionally, that if stay is not granted he will lose his freedom contrary to the provisions of Article 29 (a) of *the Constitution* of Kenya, 2010.

12. Counsel urged that courts have held that the Applicant ought to show substantial loss that he will suffer in the event stay order are not granted by adducing sufficient evidence. He placed reliance on the case of Kenya Shell Limited vs Kibiru (1986) eKLR and the case of Silverstein VS Chesoni [2002] eKLR 867.
13. On furnishing of security, counsel submitted that the Applicant is ready to provide security as will be ordered by court. Further, that it is sufficient for the Applicants to state that he is ready to provide security or propose the kind of security but it is the discretion of the court to determine the said security and therefore the Applicant has satisfied this ground for stay. He placed reliance on the case of Arun C. Sharna vs Astana Raikundalia T/A Raimandilia & 10.
14. On whether the Appellant/Applicant has an arguable appeal, counsel submitted that the Appellant has filed Eldoret Civil Appeal Case No. E020 of 2025 where he has raised 7 grounds of appeal. The Appeal generally challenges the principles upon which the trial court reached its decision on liability and quantum and therefore the grounds of Appeal raise triable issues of both that and law and is arguable with high chances of success.
15. On whether the appeal will be rendered nugatory counsel urged that the Respondents have commenced execution of the judgment & warrants of arrest nave issued against the Appellants. Execution and payment of the decretal sum will render the appeal nugatory as it will affect the substratum of the Appeal. Counsel reiterated that the Applicants have satisfied the conditions to warrant grant of orders sought.

Respondents' submissions

16. Learned counsel for the Respondent submitted that Stay of Execution pending appeal is provided for under Order 42 Rule 6 of the Civil Procedure Rules, 2010 and further, that hat the power to grant or refuse an application for stay of execution pending appeal is discretionary. He placed reliance on the case of Samvir Trustee Limited v Guardian Bank Limited (2007) eKLR and further, urged the court to exercise discretion in granting a stay of execution pending appeal.
17. He submitted that Order 42 Rule 6 (2) of the Civil Procedure Rules 2010 provides that an Applicant should satisfy to the Court that; Substantial loss may result to him/her unless the order is made; the application has been made without unreasonable delay' and 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. Counsel cited the case of Antonie Ndiaye v African Virtual University (2015) eKLR in this regard.
18. On substantial loss, counsel cited the finding in James Wangwala & Another v Agnes Naliaka Cheseto (2012) eKLR and stated that the Applicants have not raised the contention that they stand to suffer irreparably if the Respondent levies execution against them. Further, they have not demonstrated the substantial loss they stand to suffer. He cited the cases of Kenya Shell Limited v Benjamin Karuga Kibiru & Another 0986) eKLR, and Cooperative Bank of Kenya Limited v banking Insurance & Finance Union (Kenya) 2015 eKLR in further support of this submission.
19. On delay, counsel submitted that the Applicants filed the instant application two months, and three weeks after delivery of Judgment in ELDORET SMALL CLAIMS CIVIL CLAIM E 1199 OF 2023. On security for costs, counsel placed reliance on Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others (2014) eKLR on the purpose of security and additionally, cited the case of Gianfranco Manenthi & Another v African Merchant Assurance Co. Ltd (2019)



eKLR on the same. Counsel submitted that the Applicants have not shown willingness or offered terms of security to warrant a stay of execution pending appeal. He pointed out that they only raised the issue of furnishing of security in their submissions.

20. Counsel argued that a party cannot plead new issues in the submissions that were not pleaded in their pleadings, citing the case of Clips Ltd vs Brands Imports (Africa) Ltd formerly named Brand Imports Ltd (2015) eKLR and Republic v Chairman Public Procurement Administrative Review Board & another Ex-Parte Zapkass Consulting And Training Limited & another F20141 eKLR in this regard.
21. He stated that the Applicants did not raise the issue of the Respondent being impecunious, thus unable to pay the decretal. He cited the case of Stephen Wanjohi v Central Glass Industries Ltd, Nairobi HCCC No. 6726 of 1991 and submitted that the Applicants have not met the threshold of granting a stay of execution pending appeal under Order 42 Rule 6 (2) of the Civil Procedure Rules, 2010.

Counsel submitted that the Applicants have not demonstrated why stay of execution pending appeal should be granted and urged the court to dismiss the Appeal with costs.

Analysis & Determination

22. Having addressed my mind to the pleadings and the submissions as herein summarized, it is my considered opinion that the issues for determination are;
 1. Whether the orders for stay of execution should issue
 2. Whether the Applicant should be granted leave to file an Appeal out of time
23. The principles guiding the grant of a stay of execution pending Appeal are well settled. These principles are provided for under Order 42 Rule 6(2) of the Civil Procedure Rules which provides:

“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.
24. Of special significance is that Section 34 of the Small Claims Court provides for the expeditious disposal of cases filed before these courts. The said provision also provides for the manner in which the court is mandated to handle all case that are filed before it in order that the mandate that is placed upon these courts is realized. The said provision is a mandatory one and it is as hereunder;
 1. All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.
25. The above being the case, it also follows then that appeals emanating from this court, which should be on points of law only must as well be disposed of expeditiously. The Appellant/Applicant herein seeks for leave to appeal out of time and that in the interim, a stay of execution of the decree of the court does issue for the reasons given.
26. The court herein notes that the judgement the subject matter of the decree sought to be stayed was delivered on 31st August 2024. On 22nd November 2024 costs of the suit were duly taxed at Ks. 74, 400 plus Interests. The Decree is dated 4th December 2024. This Application was filed on 23rd January 2025



and the orders sought are based inter alia on the grounds that the Respondent has obtained warrants of attachment in execution of the decree. I note that the Applicant has not given any reasons at all in his application that necessitated the delay in filing the intended appeal.

27. Primary to the court determining whether the order of stay and the other subsequent orders herein ought to be granted, the immediate issue that the court should determine is whether the delay by the applicant in moving the court is inordinate.
28. What amounts to inordinate delay was considered in the case of Nairobi HCC No. 32 of 2010, Utalii Transport Company Limited & 3 Others v NIC Bank Limited & another [2014] eKLR and the Court in determining what amounted to inordinate delay had this to say;

“Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable”
29. The above said, in considering the mandate of the Small Claims Court as being the expeditious disposal of cases and in light of the procedural safeguards that have been built into the relevant statute to ensure that this mandate is realized at all times in the hearing and determination of cases before these courts in a maximum period of six months, I am of the very well-considered opinion that an application to appeal a decision of this court brought almost five months after a determination has been made amounts to a delay that is in all aspects and respects inordinate.
30. It is also worthy of note that no explanation at all has been given for the delay and the Applicant only moved the court upon realization of the fact that execution was imminent. For this reason, I find no merit in the Application for stay of execution and the leave to file the Appeal out of time that the Applicant seeks. The Application is therefore dismissed in its entirety with costs to the Respondent and the interim orders herein issued are now hereby vacated.

READ DATED AND SIGNED AT ITEN ON 2ND OCTOBER 2025

E. OMINDE

JUDGE

