



**Apec Holdings Limited v Kenya Railways Corporation (Environment and Land Case 16 (E012) of 2021) [2025] KEELC 6846 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6846 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 16 (E012) OF 2021  
CK NZILI, J  
OCTOBER 8, 2025**

**BETWEEN**

**APEC HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**KENYA RAILWAYS CORPORATION ..... DEFENDANT**

**RULING**

1. The applicant is seeking to stay the judgment of this court delivered on 18/6/2025, where the respondent was awarded Kshs. 2,000,000/= and the costs of the suit, pending this application and the appeal.
2. The grounds on the application dated 11/7/2025 and in the affidavit sworn by Stanley Gitari are that: the applicant has lodged a notice of appeal; there is a likelihood of substantive loss upon execution by the respondent; the application is made without delay; the applicant is ready and willing to provide security for the due performance of the order and that unless the stay orders are granted, the appeal will be rendered nugatory.
3. The applicant avers that since it has met the conditions necessary for the grant of the stay orders, the appeal has reasonable chances of success; that no prejudice shall be occasioned upon the respondent; the application is filed in good faith and in the interest of justice, the same should be allowed. A copy of the notice of appeal is attached as annexure marked SG1.
4. The respondent opposes the application through a replying affidavit sworn on 29/7/2025 by Anthony Lucas. The respondent avers that the application does not meet the threshold for the grant of the orders sought; stay orders are to be aimed at maintaining the status quo, yet the applicant has never been in occupation of the suit property, and the applicant does not specify whether it intends to stay the entire judgment or the award alone.



5. Further, the respondent avers that it stands to suffer prejudice since it was declared the owner of the suit property, as it will be denied the right to enjoy its proprietary rights; the applicant has not attached the draft memorandum of appeal for the court to assess if it raises arguable points and that the applicant has not demonstrated the loss or damage to be suffered.
6. The respondent avers that the application is aimed at protracting the matter, yet the respondent is entitled to enjoy the fruits of its judgment, for which sufficient cause has not been shown to deprive it of the same. The respondent also avers that the applicant should be ordered to deposit the entire award in an interest-earning account, in the joint names of the parties' counsels, in the event the application is allowed.
7. Stay of execution pending appeal is governed by Order 42, Rule 6 of the Civil Procedure Rules. The power of a court in granting stay of execution orders is discretionary. This power must not be exercised capriciously or whimsically; it must be exercised in a way that does not prevent a party from pursuing its appeal, so that the same is not rendered nugatory should the appeal overturn the decision of the trial court. See *Butt -vs- Rent Restriction Tribunal* [1979] KECA 22 (KLR).
8. The sole purpose of a stay of execution is to preserve the subject matter in dispute, while balancing the interests of the parties and, at the same time, considering the circumstances of the case. See *Arun C Sharma -vs- Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others* [2014] eKLR. An applicant for stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2) of the Civil Procedure Rules, namely:
  - a. that a substantial loss may result to the applicant unless the order is made,
  - b. that the application has been made without unreasonable delay, and
  - c. that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.
9. In *RWW -vs- EKW* (2019) eKLR, the court held that 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. The court should, however, weigh these rights against those of the successful litigant, who should not be unnecessarily deprived of the enjoyment of the fruits of his or her judgment.
10. On the aspect of delay, the judgment was rendered on 18/6/2025, while this application was filed on 11/7/2025. The law has not set limits on the minimum and maximum delays. The court notes that a stay for 30 days was granted during the delivery of the judgment. I find no inordinate delay in applying.
11. Substantial loss is the cornerstone of stay. It was explained in the case of *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* [2012] eKLR, 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. In this application, the applicant has failed to demonstrate how it stands to suffer irreparable loss in the absence of the stay orders. At the same time, it is not clear if the respondent has executed the decree by retaking vacant possession of the suit and following the judgment of this court.
12. Balancing the competing interests of the two parties, the court is inclined to grant a conditional stay order that the applicant deposit Kshs. 2,000,000/=, in an interest-earning account to be opened in the joint names of the parties' respective lawyers, within 30 days from the date hereof; otherwise, the stay orders shall lapse.



**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT  
KITALE ON THIS 8TH DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

Ndarwa for Kiarie for the respondent present

Miss Moraa for applicant present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

