



**Kenya National Highways Authority v Socio Dairy and Farm
Produce Company Limited (Environment and Planning Appeal
E002 of 2025) [2025] KEELC 6842 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND PLANNING APPEAL E002 OF 2025**

CK NZILI, J

OCTOBER 8, 2025

BETWEEN

KENYA NATIONAL HIGHWAYS AUTHORITY APPLICANT

AND

SOCIO DAIRY AND FARM PRODUCE COMPANY LIMITED ... RESPONDENT

RULING

1. The subject of this ruling is an application dated 23/7/2025. The applicant is seeking orders:-
 - a. ...Spent
 - b. Stay of execution of the ruling of 17/6/2025 and any consequential orders issued by Hon. S.K. Mokua in MCELC/E159 of 2023, that half of the contested decretal amount be paid directly to the respondent, pending the application and the appeal.
 - c. Consolidation of Kitale ELC Appeal No. E013 of 2025 with this appeal.
 - d. Any other orders as may be just and appropriate.
 - e. Costs to abide by the outcome of the appeal.
2. The grounds are that a default judgment was delivered on 17/4/2025, where the respondent was awarded Kshs. 11,000,000/= for trespass.
3. Being dissatisfied with the default judgment, the applicant filed Kitale ELC Appeal No. E013 of 2025 and sought a stay of execution of the judgment at the lower court. In a delivered on 17/6/2025, the trial court issued a conditional stay order for the applicant to pay half of the decretal amount to the respondent, and then deposit the remaining half in a joint interest-earning account. The applicant has now filed an appeal over the said ruling. Since the two pending appeals arise from the same suit, involve



- the same parties, decretal sum, issues of fact and law, the applicant states that consolidation of the two will enhance judicial efficiency, prevent conflicting decisions, and serve the ends of justice.
4. The applicant on the issue of stay of execution deposes that it stands to suffer substantial and irrecoverable loss in the event of a successful appeal, since the respondent might not be able to repay the decretal amount. Further, the applicant deposes that it is willing to deposit the entire decretal sum in an interest-earning account, in the names of both parties' advocates or in court; otherwise, the appeal stands to be rendered nugatory. The applicant deposes that the application has been filed without any unreasonable delay, and the respondent shall not suffer any prejudice if the orders are granted.
 5. In the affidavit sworn by Ian Mudavadi on 23/7/2025, a senior legal officer of the applicant, he has attached copies of the ruling and the memorandum of appeal as annexures marked IM-1 and 2, respectively.
 6. The respondent has opposed the motion through a replying affidavit sworn on 29/7/2025 by Alfred Sambut, the chairman of the respondent. He deposes that the application is bad in law; an abuse of the court process, misconceived, vexatious, frivolous, brought in bad faith, and should be dismissed. The deponent avers that the application is alien, incompetent, unprocedural, and fatally defective in view of Order 42 Rule 6(1) of the Civil Procedure Rules; it ought to have been filed in Kitale ELC Appeal No. E013 of 2025 and not in this appeal; the appeal is incompetent; bad in law; fatally defective for being filed without leave as required under Order 43, Rule 1 (2) of the Civil Procedure Rules, since the ruling and order were in respect to Order 42 Rule 6 of the Rules, where leave of court must be sought before filing.
 7. The deponent deposes that the court lacks jurisdiction to hear and determine the application and the appeal; that in the ruling of 17/6/2025, the court granted a conditional stay that the applicant deposit half of the decretal amount, Kshs. 5,500,000/=, either in court, or in a joint interest-earning account, in the names of the parties' advocates, within 30 days, a condition which the applicant is yet to comply with.
 8. The deponent states that the respondent is capable of refunding half the decretal sum, as it owns 2 acres of land valued at Kshs. 11,000,000/=, according to copies of the title and valuation report attached as annexures marked ASK 1(a) and (b).
 9. The deponent deposes that the application has been filed after an unreasonable delay, which the applicant has not explained, yet litigation must come to an end. The respondent also relies on notice of preliminary objection and grounds of opposition, reiterating the above issues.
 10. When this matter came for an interpartes hearing on 30/7/2025, the court granted a conditional order of stay, that the applicant to provide a bond equivalent to Kshs. 2,700,000/= within 7 days thereof, which order would lapse in default. There is no evidence that the same has been deposited before the court.
 11. In written submissions dated 30/7/2025, the respondent isolated four issues for determination. On the competency of this appeal and application, it submits that it is contrary to Order 43 Rule 1(2), and Order 42 Rule 6 of the Civil Procedure Rules, and should have been filed in Kitale ELC Appeal No. E013 of 2025. Accordingly, the respondent submits that equity does not aid the indolent since the application has been brought after an unreasonable delay. Further, the respondent submits that it is capable of repaying the decretal amount. Reliance is placed on National Industrial Credit Bank Limited -vs- Aquinas Francis Wasike (2006) eKLR.



12. On consolidation, the deponent submits that it can only apply to competent appeals that are properly before the court; hence, the present appeal, having been filed without leave, cannot be consolidated with Kitale ELC Appeal No. E013 of 2025.
13. It is a trite law that a preliminary objection is valid if, firstly, it raises a pure point of law. Secondly, the objection should be argued on the assumption that all the facts pleaded by the party against whom it is raised are correct. Lastly, an objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. See *Mukisa Biscuit Manufacturing Co. Ltd -vs West End Distributors Ltd* [1969] EA 696 and *Oraro -vs- Mbaja* [2005] 1KLR 141.
14. The respondent contends that the appellant does not have an arguable appeal since the Memorandum of Appeal dated 16/7/2025 was filed without leave. Section 75 (1) of the *Civil Procedure Act* as read together with Order 43 Rule (1) of the Civil Procedure Rules expressly provides for the orders from which appeals lie as a matter of right and those from which appeals would lie, only with leave of the court making the order sought to be challenged on appeal or the court to which the appeal would lie if leave were granted. Further, Order 43 Rule 1(2) of the Civil Procedure Rules provides that an appeal shall lie with the leave of the court from any other order made under the Rules.
15. Unless the order sought to be appealed from falls under the orders provided for under Section 75(1) of the *Civil Procedure Act* and Order 43(1) of the Civil Procedure Rules, leave to appeal must be sought and obtained as envisaged under the said provisions of the law, from the Court that made the order.
16. Such leave must be sought either by way of an oral application at the time the order was made or within 14 days from the date the order was made, before an appeal can be filed. From the ruling subject to this appeal and application, the applicant was seeking a stay of execution, which is governed by Order 42 Rule 6 of the Civil Procedure Rules. From the provisions of Order 43 Rule 1(1), an appeal does not lie as of right and requires leave of court to be filed. The appeal herein is dated 16/7/2025. Without leave, it is dead on arrival.
17. In determining the question on consolidation of suits, the Supreme Court in *Law Society of Kenya -vs- Center for Human Rights & Democracy & 12 Others* [2014] eKLR, held: -

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”
18. In *Nyati Security Guards & Services Ltd -vs- Municipal Council of Mombasa* [2000] eKLR, the court held: -

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where:- Some common questions of law or fact arises in both or all of them; the rights or reliefs claimed in them are in respect of the same transactions; and for some other reasons, it is desirable to make an order for consolidating them.” Unfortunately, only competent suits or appeals can be consolidated.
19. The court finds no merit in the instant application, since the appeal is incompetent. It is therefore dismissed with costs.

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

Bala for Kaloki for applicants present

Nabwile for Kidiavai for respondents present

HON. C.K. NZILI

JUDGE, ELC KITALE.

