



**Murira & 26 others v China Communications Construction Company Limited  
(Environment and Land Case 2 of 2020) [2025] KEELC 5749 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5749 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 2 OF 2020**

**MD MWANGI, J**

**JULY 31, 2025**

**BETWEEN**

**WILLIAM MUNGAI MURIRA ..... 1<sup>ST</sup> PLAINTIFF**  
**JOSEPH KIPRUTO NGETICH ..... 2<sup>ND</sup> PLAINTIFF**  
**BONIFACE KIPLIMO ..... 3<sup>RD</sup> PLAINTIFF**  
**DAVID NYANGAU OKEMWO ..... 4<sup>TH</sup> PLAINTIFF**  
**FREDRICK OTIENO AMOLLO ..... 5<sup>TH</sup> PLAINTIFF**  
**LIDIAH MAKENA MUGUNA ..... 6<sup>TH</sup> PLAINTIFF**  
**WILFRED WAMBURA KARANJA ..... 7<sup>TH</sup> PLAINTIFF**  
**KEZIAH WAIRIMU KAMAU ..... 8<sup>TH</sup> PLAINTIFF**  
**THOMAS MBOYA ONYANGO ..... 9<sup>TH</sup> PLAINTIFF**  
**KIPKOECH MUTAI ..... 10<sup>TH</sup> PLAINTIFF**  
**PAUL AMWOMA MOKAYA ..... 11<sup>TH</sup> PLAINTIFF**  
**LUKA MOMANYI OMBATI ..... 12<sup>TH</sup> PLAINTIFF**  
**REUBEN MAKORI OMARE ..... 13<sup>TH</sup> PLAINTIFF**  
**EMILY MOKEIRA ORIOKI ..... 14<sup>TH</sup> PLAINTIFF**  
**MARTHA ACHIENG AKELLO ..... 15<sup>TH</sup> PLAINTIFF**  
**PAMELA ACHIENG KOKONYA ..... 16<sup>TH</sup> PLAINTIFF**  
**EXZEL NDUMBI MWANGI ..... 17<sup>TH</sup> PLAINTIFF**  
**CHARLES KARANJA NGUNJIRI ..... 18<sup>TH</sup> PLAINTIFF**  
**PROF. ALFRED ORINA ISAAC ..... 19<sup>TH</sup> PLAINTIFF**



FRED DSOUZA ONGWARE ..... 20<sup>TH</sup> PLAINTIFF  
STENLEY MARETE JACKSON ..... 21<sup>ST</sup> PLAINTIFF  
BOB SITATI KHAREMWA ..... 22<sup>ND</sup> PLAINTIFF  
ANDREW KAGWA ONYAMO ..... 23<sup>RD</sup> PLAINTIFF  
ANTHONY KUNGU KIARIE ..... 24<sup>TH</sup> PLAINTIFF  
DENNIS WAFULA WAMALWA ..... 25<sup>TH</sup> PLAINTIFF  
JANET NIELSEN NAMALWA ..... 26<sup>TH</sup> PLAINTIFF  
JOSEPH MWANGI THATI ..... 27<sup>TH</sup> PLAINTIFF

AND

CHINA COMMUNICATIONS CONSTRUCTION COMPANY  
LIMITED ..... DEFENDANT

## RULING

In respect of the notice of motion dated 16th April, 2025 seeking stay of execution of judgment delivered on 10/2/2025 and taxation proceedings

### Background

1. The Defendant/Applicant's Notice of Motion dated 16<sup>th</sup> April, 2025 brought under Order 42 Rule 6(1) and (2) of the *Civil Procedure Rules* and Sections 1A, 1B and 3A of the *Civil Procedure Act* seeks for the following prayers;
  - a. Pending hearing and determination of the Applicant intended Appeal, this Honorable court be pleased to stay the execution of the judgment delivered on 10/2/2025 by the Honorable Justice Gicheru and further consequential orders and decree.
  - b. The Court be pleased to grant an order of stay of taxation proceedings in this matter pending the hearing and determination of the Applicant Intended Appeal.
  - c. Costs of the Application be in cause.
2. The Motion is premised on the grounds on the face of it and Supporting Affidavit sworn by the Defendant's Project Manager, Mr. Wen Yukun on 16<sup>th</sup> April, 2025. The deponent depones that the judgment delivered on 10<sup>th</sup> February, 2025 and subsequently reviewed on 12<sup>th</sup> March, 2025 directed the Defendant/Applicant to pay the Plaintiffs Ksh. 32,122,100/=, with interest and costs.
3. It is averred that the Defendant/Applicant has filed a Notice of Appeal and requested courts proceedings for purposes of preparing the record of Appeal because it is aggrieved with the judgment. The deponent decries that execution proceedings might be commenced against the Defendant because the Plaintiffs has served it with a decree demanding payment. Further taxation of the Bill of costs dated 3<sup>rd</sup> March, 2025 has been served upon the Defendant amounting to Ksh. 2,057,940/= and is scheduled for taxation on 26<sup>th</sup> May, 2025.
4. According to the Defendant, if the orders sought are not granted, it will suffer irreparable loss because it may not be refunded the monies should the Appeal succeed hence rendering it a nugatory. The



Defendant insists that its appeal is arguable and has high chances of success. The Defendant further alleges that it is willing to comply with any conditions imposed on stay including depositing 50% of the decretal sum amounting to Ksh. 16,061,051/= as security in court within 40 days.

### **Plaintiff's case**

5. The Application is opposed by the Plaintiffs through the replying affidavit of William Mungai Murira sworn on 6<sup>th</sup> May, 2025 who avows that the application has not met the threshold required for issuance of the orders sought because the Defendant has not demonstrated that it shall suffer substantial loss if the orders are not granted. It is further alleged that the Application seeks to forestall the taxation of the Plaintiffs/Respondents' Bills of Costs dated 3<sup>rd</sup> March, 2025 scheduled for taxation on 26<sup>th</sup> May, 2025. According to the Plaintiffs, taxation proceedings ought to proceed to conclusion because they are independent of the Appeal.
6. The Plaintiff maintains that they are entitled to enjoy the fruits of their judgment given their suit has been concluded after five years in court. The Plaintiffs claim that Kenya Revenue Authority tax evasion claims against the Defendant assessed at Ksh. 1,047,557,661/= were upheld by the Tax Tribunal on 9<sup>th</sup> August, 2024. Given that the Defendant is a foreign company registered in Kenya and whose assets are unknown, it is likely to fold up and leave the country and the court's jurisdiction while avoiding payment of the decretal sum and interest amounting to Ksh. 52,038,450/= and Ksh. 2,057,940.26/= respectively.
7. According to the Plaintiff, the Appeal is not arguable and has no chances of success because the restoration costs estimated at Ksh. 28,922,500 which were adopted by the court in its judgment were arrived at by an independent umpire appointed by the court to undertake the survey. The Plaintiffs accuse the Defendant/Applicant of refusal to settle the decretal sum as ordered by the court yet its witness, DWI, a geologist admitted that the Defendant's activities damaged the Plaintiffs' houses.
8. The Plaintiffs opine that stay of execution should be granted on conditions that the Defendant pays the admitted costs amounting to Ksh. 11,960,000/= to them and which was proposed by its quantity surveyor, Ann Omufira, for restoring the plaintiffs' houses while the balance of Ksh. 42,136,390.26/= relating to judgment sum, interests and costs should be deposited in a joint interest earning account.

### **Defendant's Rejoinder**

9. The Plaintiffs' assertions are denied through a further affidavit by the 1<sup>st</sup> Defendant's Project Manager, Wen Yukun sworn on 19<sup>th</sup> May, 2025 who restates that the Defendant will suffer substantial loss if stay of execution is not granted. This is because pursuing and tracing the Plaintiffs to refund the decretal sum might be impossible. The Defendant asserts that given its international reputation, it cannot leave the court's jurisdiction because it is undertaking infrastructure projects in Kenya. Accordingly, its right to appeal if dissatisfied with court decision must be balanced against the Plaintiffs' right to enjoy the fruits of their judgment.
10. It is the Defendant's case that it is not in a position to raise decretal sum of Ksh. 54,096,390.06/= proposed by the Plaintiffs because it might cripple its ability to deliver ongoing infrastructure projects and defeat its right to appeal. It further denies ever admitting liability of damaging the Plaintiffs' houses; this is indeed one of the grounds of its Appeal.



## Courts directions

11. When the Application came up for inter partes hearing on 14<sup>th</sup> May, 2025, with the concurrence of the parties, the Court directed that the Application be disposed of through written submissions. Both sides complied and the court has had occasion to consider the submissions in writing this ruling.

## Issues for determination

12. Having considered the application in its entirety, the Plaintiffs' response as well as the submissions filed, the following issues present themselves for determination;
  - a. Whether the Defendant has met the threshold for grant of stay of execution orders pending the hearing and determination of its intended Appeal; and
  - b. Whether an order for stay should be issued in respect of the Taxation proceedings.

## Analysis and determination

### A. Whether the Defendant has met the threshold for grant of stay of execution orders pending the hearing and determination of its intended Appeal

13. Order 42 Rule 6(2) of the *Civil Procedure Rules* stipulates that an Applicant for orders of stay of execution must satisfy the following conditions to enable court issue stay of execution orders in their favor;
  - a. The Court is satisfied that the Applicant has established sufficient cause.
  - b. The court is satisfied the Applicant will suffer substantial loss if order is not granted.
  - c. Application is made without undue delay.
  - d. Security for due performance of decree or orders.
14. While making reference to the above cited provisions, the Court of Appeal in *Halai & another v Thornton & Turpin (1963) Ltd* [1990] KECA 65 (KLR) stated as follows in respect to the conditionalities for stay of execution;

“The application before the superior court was made under Order XLI rule 4. In sub-rule (1) the order provides that the court appealed from may for sufficient cause (emphasis is ours) order stay of execution of a decree or order made or passed by it. Before the superior court can exercise its discretion in favour of an applicant for a stay of execution, the applicant must first establish a sufficient cause.....Thus, the Superior Court's discretion is fettered by three conditions. Firstly, the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable delay.”

15. Similarly, the Court of Appeal in *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR), made the following pronouncement on exercise of judicial discretion while granting stay of execution

“It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying



execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory.”

16. The defendant claims that it has met the conditions for the grant of the orders sought because it lodged its Application without inordinate delay and that the Plaintiff might not refund the decretal sum if the Appeal succeeds. Further, the Plaintiffs have not demonstrated that they generate income sufficient to refund the Defendant the said monies in case its appeal succeeds.
17. The Defendant/Applicant assertions have been refuted by the Plaintiffs who claims that the Appeal is unlikely to succeed because the restoration orders adopted by the Court were assessed by an independent umpire. Further, given that the Defendant is a foreign company, it might leave the County and the court’s jurisdiction as it escapes from paying the decretal sum.
18. The Plaintiffs have additionally in support of their response filed before this court a judgment delivered by the Tax Tribunal on 9<sup>th</sup> August, 2024 in *China Communications Construction Company Limited v Commissioner of Intelligence Strategic Operations, Investigations and Enforcement* (Appeal E267 of 2023) [2024] KETAT 1202 (KLR) (9 August 2024) (Judgment) where the Defendant was directed to pay VAT and Income Tax amounting to Ksh.1,168,119,341/=.
19. A successful litigant in a law suit is entitled to enjoy the fruits of their judgment. Similarly, a party disgruntled by a decision of a court or tribunal has the right to institute Appeal proceedings. These annotations were made by Kuloba J when the learned Judge held as follows in *Machira t/a Machira & Co Advocates v East African Standard* [2002] KEHC 1167 (KLR);

“ To be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage. That is trite knowledge. This is one of the fundamental procedural values which is acknowledged and normally must be put in effect by the way we handle applications for stay of further proceedings or execution, pending appeal. Of course, in the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in the courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court.”
20. On the issue of security for due performance of the decree, the Plaintiffs and the Defendant have both adopted different positions and conditions which they urge the court to consider should it allow the Application. The court take notes that the application was filed without undue delay.
21. Having considered the arguments from both sides, and the principles applicable as discussed above, the court finds the application for stay of execution pending appeal merited. The court however has the responsibility to balance the interest of both sides. With that in mind the court will grant a conditional stay of execution pending appeal; the condition being that the Defendant deposits 50% of the decretal amount in an interest earning account jointly held by the Plaintiffs’ and the Defendant’s Counsel in the next 45 days failing which the stay orders will automatically lapse and the Plaintiffs will be at liberty to execute the decree of the court in their favour.



**B. Whether an order for stay should be issued in respect of the Taxation proceedings**

22. Taking into considering that a decision has already been rendered in respect of the Party and Party Bill of Costs, I find that the Defendant/Applicant prayer seeking stay of taxation proceedings has already been overtaken by events.
23. On the issue of costs, the court directs that each party shall bear its own costs of this Application.
24. It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Maruti h/b for Mr. Chenge for the Plaintiffs

Mr. Ondengu for the Defendant

Court Assistant: Edwin

