



**Bunyi v Andenge (Civil Appeal E014 of 2025)
[2025] KEHC 15044 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E014 OF 2025
CM KARIUKI, J
OCTOBER 23, 2025**

BETWEEN

ANDREW MBOGO BUNYI APPELLANT

AND

TITUS MBILI ANDENGE RESPONDENT

RULING

1. In an application dated 08/05/2025, the applicant seeks stay of execution pending herein. The same is anchored in the provisions of Order 42 Rules 3 and 6 of the Criminal Procedure Code Cap 21. It is based on the grounds on the face of the Motion which are reiterated by the content of the Affidavit of Andrew Mbogo Mbunyi sworn on 04/12/2024.
2. The Applicant case is that a judgment against appellants was entered on 25/01/2023 and thereafter Auctioneer commenced execution process via proclamation of motor vehicle KCU 118A. The Applicant was not served with summons and any other notices thus was condemned unheard. He raises a triable issue because the accident was occasioned and contributed substantially by the negligence of driver motor vehicle KBB 239G and the proposed third party being the owner of the said motor vehicle is relevant party to the suit.
3. The applicant sought to set aside the Exparte Judgment which was rejected by the trial court thus instant appeal was lodged against ruling. In the grounds in support of the application, application focuses on the principles of setting aside Exparte Judgment by the trial court.
4. Applicant further filed supplementary affidavit after Replying Affidavit was filed by the Respondent. The parties were directed to canvass appeal via Submissions of which only the Respondent seems to have complied.
5. The Respondent Submissions emphasizes that the satisfaction of conditions for stay of execution under Order 42 Rule 6 (2) of the Civil Procedure Code. Being that; whether Applicant will suffer



substantial loss in event the orders sought are not granted? Respondent submits that he can refund the decretal amount in event the appeal succeeds.

6. Thus, no substantial loss can be occasioned in the instant situation. He says he is a plumber and from that business he can raise funds to refund decretal amount if appeal succeeds. The other principle is that appellant is supposed to provide security for due performance of payment of the decree in issue. He ought to put money in a joint account with Respondent's advocate to guarantee payment of decretal amount in event the appeal fails. He relied on HCCA 19/019 *victory Construction v B.M.* 2019 eKLR.

Issues, Analysis and Determination:

7. The application for the stay pending appeal is provided for in the provisions of Order 42 Rules 6 (2) [Civil Procedure Code](#) Cap 21. The Appellant established on a balance of probabilities that if stay is not granted, he would suffer irreparable loss. Secondly, he should tender a security capable of satisfying the impugned decree in the instant matter.
8. In the grounds on the application, the applicant assures court that he is ready to comply with reasonable conditions as may be imposed by the court in granting orders of stay.
9. The court is supposed to balance the interest of the contestants in the application. The Respondent avers that he can refund decretal amount if he is paid and the appeal succeeds. However, though he claims to be a plumber, he has not demonstrated with any tangible evidence how he would refund Kshs. 2,059,908.00 and costs assessed Kshs. 176,300.00 in event the appeal succeeds. Thus, in absence of evidence of ability to refund the amount the court finds that the Appellant would suffer substantial loss in event the appeal succeeds after the decretal has been paid to the Respondent or after execution for the same amount in issue and there be no recovery of the decretal amount if paid.
10. Thus, the court finds that the interest of justice dictates that a conditional stay be granted with in the following terms:
 - i. The stay of execution pending appeal is granted pending appeal on condition that the applicant deposits half of the decretal amount in an interest earning account in joint names of the parties' advocates in the next 30 days from dates herein and in default execution to issue.

DATED AND DELIVERED VIA TEAMS AT NAROK THIS 23.10.2025

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CHARLES KARIUKI

JUDGE

